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CHAPTER 597

An act to amend Sections 7260, 7262.5, and 7264 of the Government Code, relating to housing.

[Approved by Governor October 1, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Section 7260 of the Government Code is amended to read:

7260. As used in this chapter:

(a) "Public entity" includes the state, the Regents of the University of California, a county, city, city and county, district, public authority, public agency, and any other political subdivision or public corporation in the state or any entity acting on behalf of these agencies when acquiring real property, or any interest therein, in any city or county for public use and any person who has the authority to acquire property by eminent domain under state law.

(b) "Person" means any individual, partnership, corporation, limited liability company, or association.

(c) (1) "Displaced person" means both of the following:

(A) Any person who moves from real property, or who moves his or her personal property from real property, either:

(i) As a direct result of a written notice of intent to acquire or the acquisition of the real property, in whole or in part, for a program or project undertaken by a public entity or by any person having an agreement with or acting on behalf of a public entity.

(ii) As a direct result of the rehabilitation, demolition, or other displacing activity as the public entity may prescribe under a program or project undertaken by a public entity, of real property on which the person is a residential tenant or conducts a business or farm operation, in any case in which the public entity determines that the displacement is permanent. For purposes of this subparagraph, "residential tenant" includes any occupant of a residential hotel unit, as defined in subdivision (b) of Section 50669 of the Health and Safety Code, and any occupant of employee housing, as defined in Section 17008 of the Health and Safety Code, but shall not include any person who has been determined to be in unlawful occupancy of the displacement dwelling.

(B) Solely for the purposes of Sections 7261 and 7262, any person who moves from real property, or moves his or her personal property from real property, either:

(i) As a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which the person conducts a business or farm operation, for a program or project undertaken by a public entity.

(ii) As a direct result of the rehabilitation, demolition, or other displacing activity as the public entity may prescribe under a program or project undertaken by a public entity, of other real property on which the person conducts a business or farm operation, in any case in which the public entity determines that the displacement is permanent.

(2) The definition contained in this subdivision shall be construed so that persons displaced as a result of public action receive relocation benefits in cases where they are displaced as a result of an owner participation agreement or an acquisition carried out by a private person for or in connection with a public use where the public entity is otherwise empowered to acquire the property to carry out the public use. Except persons or families of low and moderate income, as defined in Section 50093 of the Health and Safety Code, who are occupants of housing which was made available to them on a permanent basis by a public agency and who are required to move from the housing, a "displaced person" shall not include any of the following:

(A) Any person who has been determined to be in unlawful occupancy of the displacement dwellings.

(B) Any person whose right of possession at the time of moving arose after the date of the public entity's acquisition of the real property.

(C) Any person who has occupied the real property for the purpose of obtaining assistance under this chapter.

(D) In any case in which the public entity acquires property for a program or project (other than a person who was an occupant of the property at the time it was acquired), any person who occupies the property for a period subject to termination when the property is needed for the program or project.

(3) (A) Notwithstanding Section 7265.3 or any other provision of law, a person who is temporarily displaced for not more than 180 days, and who is offered occupancy of a comparable replacement unit located within the same apartment complex that contains the unit from which he or she has been displaced, shall not be deemed a "displaced person" for the purposes of this chapter. This paragraph shall be applicable only if all of the following conditions are complied with:

(i) All other financial benefits and services otherwise required under this chapter are provided to the tenants temporarily displaced from their units.

(ii) The resident is offered the right to return to his or her original unit, with rent for the first 12 months subsequent to that return being the lower of the following: up to 5 percent higher than the rent at the time of displacement; or up to 30 percent of household income.

(iii) The temporary unit is not unreasonably impacted by the effects of the construction, taking into consideration the ages and

physical conditions of the members of the displaced household, and the estimated period of displacement is reasonable.

(iv) The property is a qualified affordable housing preservation project.

(B) For the purposes of this paragraph:

(i) "Apartment complex" means four or more residential rental units subject to common ownership and financing that are also located on the same or contiguous parcels.

(ii) "Qualified affordable housing preservation project" is any complex of four or more units whose owners enter into a recorded regulatory agreement, having a term for the useful life of the project, with any entity for the provision of project rehabilitation financing. For this purpose, the regulatory agreement shall require of the owner and all successors and assigns of the owner, as long as the regulatory agreement is in effect, that at least 49 percent of the tenants in the project shall have, at the time of the recordation of the regulatory agreement required by this section, incomes not in excess of 60 percent of the area median income, adjusted by household size, as determined by the appropriate agency of the State of California. In addition, a project shall be defined as a qualified affordable housing preservation project only if the beneficiary of the regulatory agreement elects this designation by so indicating on the regulatory agreement.

(d) "Business" means any lawful activity, except a farm operation, conducted for any of the following:

(1) Primarily for the purchase, sale, lease, or rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property.

(2) Primarily for the sale of services to the public.

(3) Primarily by a nonprofit organization.

(4) Solely for the purpose of Section 7262 for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display, whether or not the display is located on the premises on which any of the above activities are conducted.

(e) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing these products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(f) "Affected property" means any real property which actually declines in fair market value because of acquisition by a public entity for public use of other real property and a change in the use of the real property acquired by the public entity.

(g) "Public use" means a use for which real property may be acquired by eminent domain.

(h) "Mortgage" means classes of liens that are commonly given to secure advances on, or the unpaid purchase price of, real property, together with the credit instruments, if any, secured thereby.

(i) "Comparable replacement dwelling" means any dwelling that is all of the following:

(1) Decent, safe, and sanitary.

(2) Adequate in size to accommodate the occupants.

(3) In the case of a displaced person who is a renter, within the financial means of the displaced person. A comparable replacement dwelling is within the financial means of a displaced person if the monthly rental cost of the dwelling, including estimated average monthly utility costs, minus any replacement housing payment available to the person does not exceed 30 percent of the person's average monthly income, unless the displaced person meets one or more of the following conditions, in which case the payment of the monthly rental cost of the comparable replacement dwelling, including estimated average monthly utility costs, minus any replacement housing payment available to the person shall not exceed 25 percent of the person's average monthly income:

(A) Prior to January 1, 1998, the displaced person received a notice to vacate from a public entity, or from a person having an agreement with a public entity.

(B) The displaced person resides on property that was acquired by a public entity, or by a person having an agreement with a public entity, prior to January 1, 1998.

(C) Prior to January 1, 1998, a public entity, or a person having an agreement with a public entity, initiated negotiations to acquire the property on which the displaced person resides.

(D) Prior to January 1, 1998, a public entity, or a person having an agreement with a public entity, entered into an agreement to acquire the property on which the displaced person resides.

(E) Prior to January 1, 1998, a public entity, or a person having an agreement with a public entity, gave written notice of intent to acquire the property on which the displaced person resides.

(F) The displaced person is covered by, or resides in an area or project covered by, a final relocation plan that was adopted by the legislative body prior to January 1, 1998, pursuant to this chapter and the regulations promulgated thereunder.

(G) The displaced person is covered by, or resides in an area or project covered by, a proposed relocation plan that was required to have been submitted prior to January 1, 1998, to the Department of Housing and Community Development or to a local relocation committee, or for which notice was required to have been provided to occupants of the property prior to January 1, 1998, pursuant to this chapter and the regulations promulgated thereunder.

(H) The displaced person is covered by, or resides in an area or project covered by, a proposed relocation plan that was submitted prior to January 1, 1998, to the Department of Housing and

Community Development or to a local relocation committee, or for which notice was provided to the public or to occupants of the property prior to January 1, 1998, pursuant to this chapter and the regulations promulgated thereunder, and the person is eventually displaced by the project covered in the proposed relocation plan.

(I) The displaced person resides on property for which a contract for acquisition, rehabilitation, demolition, construction, or other displacing activity was entered into by a public entity, or by a person having an agreement with a public entity, prior to January 1998.

(J) The displaced person resides on property where an owner participation agreement, or other agreement between a public entity and a private party that will result in the acquisition, rehabilitation, demolition, or development of the property or other displacement, was entered into prior to January 1, 1998, and the displaced person resides in the property at the time of the agreement, provides information to the public entity, or person having an agreement with the public entity showing that he or she did reside in the property at the time of the agreement and is eventually displaced by the project covered in the agreement.

(4) Comparable with respect to the number of rooms, habitable space, and type and quality of construction. Comparability under this paragraph shall not require strict adherence to a detailed, feature-by-feature comparison. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features shall be present.

(5) In an area not subject to unreasonable adverse environmental conditions.

(6) In a location generally not less desirable than the location of the displaced persons dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment.

(j) "Displacing agency" means any public entity or person carrying out a program or project which causes a person to be a displaced person for a public project.

(k) "Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(*l*) "Small business" means a business as defined in Part 24 of Title 49 of the Code of Federal Regulations.

(m) "Lead agency" means the Department of Housing and Community Development.

SEC. 2. Section 7262.5 of the Government Code is amended to read:

7262.5. (a) Notwithstanding Section 7265.3 or any other provision of law, tenants residing in any multifamily rental project of four or more units who are displaced from the project for a period of 180 days or less as part of a rehabilitation of that project, that is funded

in whole or in part by a public entity, shall not be deemed permanently displaced if all of the following criteria are satisfied:

(1) All other financial benefits and services otherwise required under this chapter are provided to the tenants temporarily displaced from their units, including relocation to a comparable replacement unit.

(2) The resident is offered the right to return to his or her original unit, with rent for the first 12 months subsequent to that return being the lower of the following: up to 5 percent higher than the rent at the time of displacement; or up to 30 percent of household income.

(3) The estimated time of displacement is reasonable, and the project is a qualified affordable housing preservation project.

(b) For the purposes of this section, "qualified affordable housing preservation project" shall have the meaning set forth in subparagraph (B) of paragraph (3) of subdivision (c) of Section 7260.

SEC. 3. Section 7264 of the Government Code is amended to read:

7264. (a) In addition to the payments required by Section 7262, as a part of the cost of acquisition, the public entity shall make a payment to any displaced person displaced from any dwelling not eligible to receive a payment under Section 7263 which was actually and lawfully occupied by the person as a permanent or customary and usual place of abode for not less than 90 days prior to the initiation of negotiation by the public entity for the acquisition of the dwelling, or in any case in which displacement is not a direct result of acquisition, or any other event which the public entity shall prescribe.

(b) The payment, not to exceed five thousand two hundred fifty dollars ($5,250), shall be the additional amount which is necessary to enable the person to lease or rent a comparable replacement dwelling for a period not to exceed 42 months, unless the displaced person meets one or more of the conditions set forth in paragraph (3) of subdivision (i) of Section 7260, in which case the payment, which shall not exceed five thousand two hundred fifty dollars ($5,250), shall be the additional amount which is necessary to enable the person to lease or rent a comparable replacement dwelling for a period not to exceed 48 months. However, publicly funded transportation projects shall make payments enabling the person to lease or rent a comparable replacement dwelling for a period not to exceed 42 months, including compensation for utilities, as provided in subdivision (b) of Section 24.402 of Part 24 of Title 49 of the Code of Federal Regulations. Payments up to the maximum of five thousand two hundred fifty dollars ($5,250) shall be made in a lump sum. Should an agency pay pursuant to Section 7264.5 an amount exceeding the maximum amount, payment may be made periodically. Computation of a payment under this subdivision to a low-income displaced person for a comparable replacement dwelling shall take into account the person's income.

(c) Any person eligible for a payment under subdivision (a) may elect to apply the payment to a downpayment on, and other incidental expenses pursuant to, the purchase of a decent, safe, and sanitary replacement dwelling. The person may, at the discretion of the public entity, be eligible under this subdivision for the maximum payment allowed under subdivision (b), except that, in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least 90 days but not more than 180 days immediately prior to the initiation of negotiations for the acquisition of the dwelling, the payment shall not exceed the payment which the person would otherwise have received under subdivision (b) of Section 7263 had the person owned and occupied the displacement dwelling 180 days immediately prior to the initiation of the negotiations.

(d) In implementing this chapter, it is the intent of the Legislature that special consideration shall be given to assisting any displaced person 62 years of age or older to locate or lease or rent a comparable replacement dwelling.

SEC. 4. The amendments to Sections 7260, 7262.5, and 7264, made by this act shall apply prospectively only from January 1, 1998, and shall apply only to the extent that they do not adversely affect existing rights of persons or households entitled to benefits under this chapter on or before December 31, 1997.

CHAPTER 598

An act to repeal Part 4 (commencing with Section 330.24) of Division 1 of the Civil Code, to amend Sections 7312 and 25100 of, and to add Part 7 (commencing with Section 14300), Part 8 (commencing with Section 14350), Part 9 (commencing with Section 14400), Part 10 (commencing with Section 14450), Part 11 (commencing with Section 14500), and Part 12 (commencing with Section 14550) to Division 3 of Title 1 of, the Corporations Code, to amend Section 25988 of the Health and Safety Code, and to amend Sections 597d, 597z, 11105, 11165.16, 12031, and 12583 of the Penal Code, relating to corporations.

[Approved by Governor October 1, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Part 4 (commencing with Section 330.24) of Division 1 of the Civil Code is repealed.

SEC. 2. Section 7312 of the Corporations Code is amended to read:

7312. No person may hold more than one membership, and no fractional memberships may be held, provided, however, that:

(a) Two or more persons may have an indivisible interest in a single membership when authorized by, and in a manner or under the circumstances prescribed by, the articles or bylaws subject to Section 7612.

(b) If the articles or bylaws provide for classes of membership and if the articles or bylaws permit a person to be a member of more than one class, a person may hold a membership in one or more classes.

(c) Any branch, division, or office of any person, which is not formed primarily to be a member, may hold a separate membership.

(d) In the case of membership in an owners association, (as defined in Section 11003.1 of the Business and Professions Code, and created in connection with any of the forms of development referred to in Section 11004.5 of the Business and Professions Code) the articles or bylaws may permit a person who owns an interest, or who has a right of exclusive occupancy, in more than one lot, parcel, area, apartment, or unit to hold a separate membership in the owners' association for each lot, parcel, area, apartment, or unit.

(e) In the case of membership in a mutual water company, as defined in Section 14300 of the Corporations Code, the articles or bylaws may permit a person entitled to membership by reason of the ownership, lease, or right of occupancy of more than one lot, parcel, or other service unit to hold a separate membership in the mutual water company for each such lot, parcel, or other service unit.

(f) In the case of membership in a mobilehome park acquisition corporation, as described in Section 11010.8 of the Business and Professions Code, a bona fide secured party who has, pursuant to a security interest in a membership, taken title to the membership by way of foreclosure, repossession or voluntary repossession, and who is actively attempting to resell the membership to a prospective homeowner or resident of the mobilehome park, may own more than one membership.

SEC. 3. Part 7 (commencing with Section 14300) is added to Division 3 of Title 1 of the Corporations Code, to read:

PART 7. GENERAL PROVISIONS APPLICABLE TO CERTAIN CORPORATIONS

CHAPTER 1. WATER COMPANIES

14300. Any corporation organized for or engaged in the business of selling, distributing, supplying or delivering water for irrigation purposes may provide, and any corporation organized for or engaged in the business of selling, distributing, supplying, or delivering water for domestic use shall provide, in its articles or bylaws that water shall be sold, distributed, supplied or delivered only to owners of its shares and that the shares shall be appurtenant to certain lands when the

same are described in the certificate issued therefor; and when the certificate is so issued and a certified copy of the articles or bylaws recorded in the office of the county recorder in the county where the lands are situated the shares of stock shall become appurtenant to the lands and shall only be transferred therewith, except after sale or forfeiture for delinquent assessments thereon as provided in Section 14303. Notwithstanding this provision in its articles or bylaws, any such corporation may sell water to the state, or any department or agency thereof, or to any school district, or to any public agency, or, to any other mutual water company or, during any emergency resulting from fire or other disaster involving danger to public health or safety, to any person at the same rates as to holders of shares of the corporations; and provided further, that any corporation may enter into a contract with a county fire protection district to furnish water to fire hydrants and for fire suppression or fire prevention purposes at a flat rate per hydrant or other connection. In the event lands to which any stock is appurtenant are owned or purchased by the state, or any department or agency thereof, or any school district, or public agency, the stock shall be canceled by the secretary, but shall be reissued to any person later acquiring title to the land from the state department, agency, or school district, or public agency.

14301. A corporation, including a nonprofit corporation organized for or engaged in the business of developing, distributing, supplying, or delivering water for irrigation or domestic use, or both, may provide in its articles, or may amend its articles to provide, that its only purpose shall be to develop, distribute, supply, or deliver water for irrigation or domestic use, or both, to its members or shareholders, at actual cost plus necessary expenses.

The amendment of the articles may be accomplished by:

(a) The passage by a three-fourths vote of the members of the board of directors of the corporation of a resolution adopting as the purpose of the corporation the purpose set forth in this section.

(b) The signing, verification, and filing of a certificate setting forth the resolution and the manner of its adoption.

The corporation shall not distribute any gains, profits, or dividends to its members or shareholders except upon the dissolution of the corporation.

14302. Whenever the owner of real property to which water stock by the terms of the certificate thereof is appurtenant at the time of conveyance, by properly executed conveyance, transfers to another the real property with the appurtenances belonging to the property, or whenever title to the property passes by execution sale, or by foreclosure or probate proceedings, the secretary of the water company that issued the stock shall, upon exhibition to him or her of a deed of the land duly recorded, or the necessary court order duly recorded, issue to the grantee named in the conveyance a new certificate of stock for the number of shares appurtenant to the land as shown by the books and records of the company. The secretary of

the water company shall enter the name of the grantee upon the books of the company as the owner of the shares of stock and shall cancel on the books the number of former shares of stock so appurtenant to the land in the name of the grantor or of any previous owner of the land, or of any other person.

14303. A corporation organized for or engaged in the business of selling, distributing, supplying, or delivering water for irrigation purposes or domestic use, and not as a public utility, may levy assessments upon its shares, whether or not fully paid, unless otherwise provided in its articles or bylaws. If any shares of the corporation that have been made appurtenant to any land as provided in this chapter, become delinquent in the payment of assessments, the right to receive water or dividends thereon may be denied, and they may be sold and transferred without those lands as if not appurtenant thereto, and the purchaser shall acquire the right to receive water as provided in the articles or bylaws of the corporation, or they may be forfeited to the corporation.

CHAPTER 2. MUTUAL WATER COMPANIES FORMED IN CONNECTION WITH SUBDIVIDED LANDS

14310. (a) It is the intent of the Legislature to ensure both of the following:

(1) That when a mutual water company is formed or is about to be formed in connection with a subdivision, as defined in Sections 11000 and 11004.5 of the Business and Professions Code, an adequate potable water supply and distribution system exists for domestic use and fire protection.

(2) That adequate disclosure and protection to the security holders exist with respect to rights and duties arising from their security holdings in a mutual water company.

(b) For purposes of this chapter, the use of the term "subdivision" has the same definition as "subdivision" as defined in Sections 11000 and 11004.5 of the Business and Professions Code.

14311. A mutual water company formed on or after January 1, 1998, in connection with the offering for sale or lease, or with the sale or lease, of lots within a subdivision and organized to sell, distribute, supply, or deliver water for domestic use to owners of lots in the subdivision shall meet all the requirements of this chapter. A mutual water company described in this section and formed before January 1, 1998, may elect to meet all the requirements of this chapter.

14312. (a) Any person who intends to offer for sale or lease lots within a subdivision within this state and to provide water for domestic use to purchasers of the lots within a subdivision through the formation of a mutual water corporation described in Section 14311, shall include as part of the application for a public report, as described in Section 11010 of the Business and Professions Code, a

separate document containing all the following information, representations, and assurances:

(1) That the provisions of this chapter have been complied with.

(2) That the area in which the mutual water company proposes to deliver water encompasses and includes the entire subdivision, and when applicable, will include parcels to be annexed to the subdivision.

(3) That the mutual water company contacted the Public Utilities Commission and the county local agency formation commission to determine if the proposed area described in paragraph (2) will overlap an existing water service area or if an existing water service area could more appropriately serve the subdivision.

(4) That the mutual water company has a source of, and title to, a water supply, distribution, and fire protection system sufficient to satisfy expected demands for water from the subdivision.

(5) That copies of the contracts and other documents relating to the acquisition by the mutual water company of the water supply, distribution, and fire protection system have been delivered to, and are on file with, the mutual water company and that these contracts and documents evidence the mutual water company's title to the water supply, distribution, and fire protection system.

(6) That the subdivider or applicant has executed and entered into a written contract with the mutual water company wherein the subdivider or applicant has agreed to pay monthly a proportional part of the repair and replacement fund according to a ratio of the number of lots owned or controlled by the subdivider or applicant to the total number of lots in the subdivision.

(7) That an engineer's report has been prepared in accordance with this chapter and Sections 260.504.2 to 260.504.2.4, inclusive, of Title 10 of the California Code of Regulations and is on file with the mutual water company.

(8) That the mutual water company will distribute potable water for domestic use and has obtained, and has on file, a copy of the certificate of the Director of Public Health, as required by Sections 116300 to 116385, inclusive, of the Health and Safety Code.

(9) That the securities of the mutual benefit water corporation will be sold or issued only to purchasers of lots in the subdivision, or to successors in interest of purchasers of lots in the subdivision, and not sold or issued to the subdivider, applicant, or to the successor in interest of the subdivider or applicant, and that the securities shall be sold or issued only after a public report for the subdivision has been issued by the Real Estate Commissioner.

(10) That the securities to be issued by the mutual water company are appurtenant to the land pursuant to Section 14300.

(11) That the water supply and distribution system will serve each lot in the subdivision and be completed prior to the issuance of the public report by the Real Estate Commissioner.

(12) That there is a statement, signed by either the engineer who prepared the engineer's report referred to in paragraph (7) or a person employed or acting on behalf of a public agency or other independent qualified person, that the water supply and distribution system has been examined and tested and that the water supply and distribution system operates in accordance with the design standards of the water supply and distribution system required by this chapter, and that a copy of this statement is on file with the mutual water company.

(13) That the articles of incorporation or bylaws of the mutual water company contain all of the following:

(A) A statement to the effect that the mutual water company shall provide water to all members or shareholders. If there will be an owners' association of the subdivision, an additional statement that water shall also be provided to the common areas.

(B) A provision directing the board of directors to establish a rate structure that will result in the accumulation and maintenance of a fund for the repair, administration, maintenance, and replacement of the water supply, distribution, and fire protection system, that the rate charged shall bear a reasonable relationship to the cost of furnishing water and maintaining the system, and that unimproved lots included within the area to be served shall bear a proportionate share of the cost of repair and replacement of the water supply, distribution, and fire protection system, as well as a proportionate share of the cost of maintaining the fund.

(C) A statement evidencing a reasonable relationship between each unit of the securities to be issued and each unit of the area to be served such as one share of common stock issued for each subdivision lot purchased.

(D) A prohibition on the issuance of fractional shares or securities.

(E) A statement, meeting the requirements of Section 14300, that the securities are appurtenant to the land within the area to be served.

(F) Provision for the transfer of the securities, voting rights of the security holders, inspection of books and records by security holders, necessary or contemplated expansion of the facilities of the mutual water company, and further subdivision, where applicable, of the area to be served.

(G) The limitation on the salaries paid to the persons operating, or employed by, the mutual water company, including officers and directors.

(H) A provision for annual meetings of the security holders accompanied by a provision for adequate notice.

(I) A provision for the annual distribution to each security holder of fiscal yearend financial statements within 105 days of the close of the fiscal year.

(J) In the case of a mutual water company that purchases water for distribution from a public utility, municipal water company, or

water district, a provision for charging all security holders a pro rata amount of the cost of water supplied to an entity providing fire protection service.

(K) A provision that a share certificate shall be issued to each lot purchased.

(L) In the case of a mutual water company serving a residential subdivision, the following statements: (i) the mutual water company shall be a separate corporation formed and organized for the purpose described in Section 14311; and (ii) if a shareholder becomes delinquent in paying assessments, the right to receive water or dividends may be denied or forfeited but those rights shall not be sold or transferred without the land.

(14) That an offering circular has been prepared and will be used in any offer and sale of the securities of the mutual water company.

(15) That the writings and documents evidencing compliance with all of the above provisions of this subdivision are on file as part of the permanent record of the mutual water company.

(b) The contracts and documents described in paragraph (5) of subdivision (a) shall include all of the following:

(1) Any bill of sale transferring all personal property used and usable in the operation of the mutual water company.

(2) A copy of any recorded deed to the wells and water tanks to be used by the mutual water company in the supply, distribution, and fire protection system.

(3) Copies of any recorded deeds granting easements for construction, repair, maintenance, and improvements of the water supply, distribution, and fire protection system.

(c) The written contract described in paragraph (6) of subdivision (a) shall provide that, in consideration of the transfer by the subdivider or applicant to the mutual water company of the water supply, distribution, and fire protection system, the mutual water company agrees to do all of the following:

(1) Sell and issue securities to the purchasers of the remaining lots in the subdivision on the same terms, except for price, if the difference is justified, for the initial purchasers.

(2) Cooperate with the subdivider or applicant in the operation, maintenance, and improvement of the present and contemplated water supply, distribution, and fire protection system.

(3) Contract with the subdivider, applicant, or a successor in interest, if a reasonable request is made to do so, for the management of the mutual water company for as long as lots in the subdivision remain unsold. The terms of the contract shall be subject to approval by the board of directors of the mutual water company, including terms related to the compensation to the subdivider, applicant, or successor in interest, if any.

(d) The offering circular described in paragraph (14) of subdivision (a) shall be delivered to each prospective purchaser of

the securities and shall include, among other things, all of the following:

(1) A discussion of the water supply, distribution, and fire protection system.

(2) A summary of the opinion of the engineer along with the engineer's consent, as required by Sections 260.504.2 to 260.504.2.4, inclusive, of Title 10 of the California Code of Regulations.

(3) The area in which the mutual water company intends to provide water service.

(4) A discussion of the rights and duties of the security holders of the mutual water company as set forth in its articles of incorporation and bylaws, including the consequence of failure to pay for water or assessments.

(5) The fact that the articles of incorporation or bylaws provide that the shares or securities of the mutual water company may not be sold separately from the right to water evidenced by the security of the mutual water company and prohibit issuance of fractional shares or securities of the mutual water company.

(6) A discussion of the certificate issued by the Director of Public Health certifying that the water is fit for domestic use.

(7) The limitation imposed on salaries to be paid to personnel operating, or employed by, the mutual water company, including officers and directors.

(8) A discussion of the transferability of the securities, the voting rights of the security holders, access to books and records, necessary or contemplated expansion of the facilities of the mutual water company, and further subdivision of the area to be served, if applicable.

(9) A discussion of the subdivider's duties with respect to maintenance and repair or replacement of the water supply, distribution, or fire protection system; and a discussion of the establishment and maintenance of the operating, repair, and replacement fund.

(e) The following exhibits shall also be attached to the offering circular:

(1) A copy of the articles of incorporation and bylaws of the mutual water company, including the articles or bylaws recorded under Section 14300.

(2) A copy of financial statements of the mutual water company. If the mutual water company has not yet commenced operations, a detailed operating budget for the first six months of operations should be included as an exhibit to the offering circular. The operating budget must include estimated monthly fees to be charged to the water users.

(3) A specimen certificate evidencing the security to be issued and meeting the requirements of Section 14300.

(f) The Real Estate Commissioner shall prescribe the form and content of the document required by this section.

14313. The engineer's report prepared pursuant to the document under Section 14312 shall contain all relevant information pertaining to the proposed water supply, distribution, and fire protection system, including, but not limited to, the following:

(a) A system map of the area to be served showing all of the following:

(1) The total acreage.

(2) The number and location of lots into which the area is or can be subdivided and the location of the connection for water service.

(3) The location of all sources of supply, principal pumping stations, diversion works, water treatment and filter plants, and storage facilities.

(4) The size, character, and location of all mains and ditches.

(5) The location of all valves and gates, gauges, interconnections with other systems, and fire hydrants.

(6) The location, size, and kind of each service pipe.

(7) The layout of all principal pumping stations and water treatment and filter plants to show size, location, and character of all major equipment, pipelines, connections, valves, and other equipment used in connection therewith.

(8) The date of construction and condition of all principal items of plant and extensions of all mains.

(b) A description of the sources of supply, including, in the case of wells, information on the depth, diameter, and casing of the well, and a statement indicating that the proposed water supply and distribution system complies with this section, supported by reports showing the sustained capacity of source of supply, or, if all or some water is to be obtained from another source, copies of contracts for obtaining such water, together with estimates of the present and ultimate water consumption in the area to be served.

(c) A statement indicating in detail the cost of the water supply, distribution, and fire protection system, and indicating the cost of any required repairs or replacement.

(d) An opinion by the engineer to the effect that the water supply, distribution, and fire protection system will adequately, dependably, and safely meet the total requirements for all water consumers under maximum consumption and will meet the requirements of Section 14314. The opinion shall have attached to it the calculations and data used in estimating the water requirements.

(e) A statement by the engineer of the estimated cost of maintenance of the system, the estimated useful life of the components of the system, the estimated cost of replacement of the system, and the monthly or annual amount which should be charged to establish a reasonable reserve for maintenance and replacement of the system based on these estimates.

14314. The water supply and distribution system of a mutual water company described in Section 14311 that proposes to distribute

water for domestic use pursuant to this chapter shall comply with all of the following design standards:

(a) The system shall be adequate to maintain normal operating pressure of not less than 25 pounds per square inch, nor more than 125 pounds per square inch, at the service connection; provided, however, that during periods of hourly maximum demand, or at the time of peak seasonal loads, the pressure may be reduced to not less than 20 pounds per square inch, and during periods of hourly minimum demand the pressure may increase to not more than 150 pounds per square inch. Variations in pressure under normal operation shall not exceed 50 percent of the average operating pressure. The average operating pressure shall be determined by computing the arithmetical average of at least 24 consecutive hourly pressure readings.

(b) The quantity of water delivered to the distribution system from all source facilities shall be sufficient to supply adequately, dependably, and safely the total requirements of all water consumers under maximum consumption, and shall be sufficient to maintain the pressure specified by subdivision (a).

(c) The distribution system shall provide at least one connection per service and, to the extent feasible, shall be designed in a property segmented grid so as to do both of the following:

(1) Minimize the extent of interruption in water service when repairs are necessary.

(2) Avoid dead ends in its water mains.

14315. (a) The mutual water company described in Section 14311 shall provide at least a minimum level of water service to its customers for fire protection purposes as an inherent part of the water system design in accordance with the standards set forth in this section. The standards set forth in this section are the minimum levels of water service that the mutual water company shall provide and shall not preclude the mutual water company from designing a fire protection system that meets higher standards, nor preclude any governmental agency from setting higher standards in any area subject to its jurisdiction. A mutual water company may request a fire protection agency to approve a fire protection system that does not meet the standards set forth in this chapter upon a showing by the mutual water company that the proposed system is adequate for fire protection purposes.

(b) In the initial construction, extension, or modification of a water system, any one of which is required to serve (1) a new user or (2) a change in use, the facilities constructed, extended, or modified shall be designed to be capable of providing, for a sustained period of at least two hours, in addition to the requirements of the average daily demand within the area to be served, the minimum flow requirements set forth below opposite the classification of land use to be served:

Land Use	Minimum Flow
1. Rural, residential with a lot density of two or fewer units per acre primarily for recreational and retirement use	250 gpm
2. Lot density of less than one single−family residential unit per acre	500 gpm
3. Lot density of one or two single−family residential units per acre	750 gpm
4. Lot density of three or more single−family residential units per acre	1,000 gpm
5. Duplex residential units, neighborhood business of one story	1,500 gpm
6. Multiple residential, one and two stories; light commercial or light industrial	2,000 gpm
7. Multiple residential, three stories or higher; heavy commercial or heavy industrial	2,500 gpm

14316. The water supply and distribution system of a mutual water company described in Section 14311 that proposes to distribute water for domestic use shall be constructed to conform with currently accepted engineering practices, and shall comply with the following construction standards where possible:

(a) Water mains to be installed below the frost level or otherwise protected to prevent freezing and shall not have less than 30 inches of cover over the top of the pipe in public streets or alleys except where such depth is rendered impossible by underground obstructions or rocky or hardpan conditions.

(b) The size, design, material, and installation of service pipes shall conform to the reasonable requirements of the mutual water company; provided, however, that the minimum size of the pipe shall be $^{3}/_{4}$ inch or greater nominal size. Except where services are not intended for use during freezing weather and arrangements are made to drain service pipes prior to freezing weather, and except at terminations in connection with the meter or water consumer's piping, all service pipes shall be laid at a depth sufficient to prevent freezing.

14317. The fire protection system of a mutual water company shall be constructed to conform with currently accepted engineering practices, and shall comply with the following construction standards:

(a) The flows set forth in Section 14315 shall be calculated on the basis of a residual pressure of 20 p.s.i.g. in the distribution system under flowing conditions.

(b) Fire hydrants shall be attached to the distribution systems at the locations designated by the entity responsible for their use for

firefighting purposes. Any new mains to which a hydrant may be attached shall not be less than six inches in diameter.

(c) Each separately operated water system shall not have less than two independent sources of supply.

14318. The mutual water company shall be financially responsible for the maintenance, repair, or replacement of fire hydrants. A mutual water company shall perform and record annual flow tests pursuant to Section 14317 or, in lieu of the annual flow test under Section 14317, any test to determine available flow performed by a fire protection agency. The recorded test results shall become part of the mutual water company's books and records.

SEC. 4. Part 8 (commencing with Section 14350) is added to Division 3 of Title 1 of the Corporations Code, to read:

PART 8. BRIDGE, FERRY, WHARF, CHUTE, AND PIER CORPORATIONS

14350. A corporation may not construct, or take tolls on, a bridge, ferry, wharf, chute, or pier until authority is granted therefor by the board of supervisors, or other governing body, as appropriate.

14351. Every corporation that has heretofore or may hereafter be incorporated may be dissolved under either of the following conditions:

(a) If within one year from filing its articles of incorporation, it has not obtained authority from the board of supervisors, or other governing body, and if, within one year thereafter, it has not commenced the construction of the bridge, wharf, chute, or pier, and if, within two years after obtaining authority, there has not been actually expended thereon a sum equal to at least 10 percent of the issued capital stock of the corporation obtaining authority.

(b) If within seven years from the time that authority to construct the bridge, wharf, chute, or pier was granted by the board of supervisors, or within that further time as the board may lawfully grant, the bridge, wharf, chute, or pier is not completed. However, the board of supervisors may from time to time by order extend the time of completion beyond seven years, if the actual and physical work of constructing the bridge, wharf, chute, or pier has been diligently prosecuted from the time of commencement thereof up to the time that application for the extension or extensions beyond seven years is presented to the board of supervisors.

(c) If, when the bridge, wharf, chute, or pier of the corporation is destroyed, it is not reconstructed and ready for use within three years thereafter.

(d) If the ferry of a corporation is not in running order within one year after authority is obtained to establish it, or if at any time thereafter it ceases for a like term consecutively to perform the duties imposed by law.

14352. The president and secretary of every bridge, ferry, wharf, chute, or pier corporation shall annually, under oath, report to the board of supervisors, or other governing body having authority in that behalf, of the county in which the articles of incorporation are filed all of the following:

(a) The cost of constructing and providing all necessary appendages and appurtenances for its bridge, ferry, wharf, chute, or pier.

(b) The amount of all moneys expended thereon, since its construction, for repairs and incidental expenses.

(c) The amount of its capital stock, how much paid in, and how much actually expended thereof.

(d) The amount received during the year for tolls, and from all other sources, stating each separately.

(e) The amount of dividends made, and the indebtedness of the corporation, specifying for what it was incurred.

(f) Other facts and particulars respecting the business of the corporation, as the board of supervisors or other governing body having authority in that behalf may require.

The president and secretary shall cause this report to be published for four weeks in a daily newspaper published nearest the bridge, ferry, wharf, pier, or chute, if required by order of the board of supervisors or other governing body having authority in that behalf. A failure to make the report subjects the corporation to a penalty of two hundred dollars ($200) and, for every week permitted to elapse after that failure, an additional penalty of fifty dollars ($50), payable in each case to the county from which the authority of the corporation was derived. All these cases shall be reported by the board of supervisors, or other governing body having authority in that behalf, to the district attorney or city attorney, who must commence an action therefor.

14353. When a bridge, ferry, wharf, chute, or pier is constructed, operated, or owned by a natural person, this part is applicable to that person in like manner as it is applicable to corporations.

SEC. 5. Part 9 (commencing with Section 14400) is added to Division 3 of Title 1 of the Corporations Code, to read:

PART 9. CABLE TELEVISION CORPORATIONS

14400. Any person who willfully and maliciously does any injury to any property of a cable television corporation is liable to the corporation for three times the amount of actual damages sustained thereby, to be recovered in any court of competent jurisdiction.

SEC. 6. Part 10 (commencing with Section 14450) is added to Division 3 of Title 1 of the Corporations Code, to read:

PART 10. WATER AND CANAL CORPORATIONS

14450. No corporation formed to supply any city, city and county, or town with water shall do so unless previously authorized by an ordinance of the authorities thereof, or unless it is done in conformity with a contract entered into between the city, city and county, or town and the corporation. Contracts so made are valid and binding in law, but do not take from the city, city and county, or town the right to regulate the rates for water, nor shall any exclusive right be granted. No contract or grant shall be made for a term exceeding 50 years.

14451. (a) All corporations formed to supply water to cities or towns shall furnish pure freshwater to the inhabitants thereof, for domestic uses, as long as the supply permits, at reasonable rates and without distinction of persons, upon proper demand therefor, and shall furnish water to the extent of their means, in case of fire or other great necessity, free of charge. The board of supervisors, or the proper city or town authorities, may prescribe proper rules relating to the delivery of water, not inconsistent with the laws of the state.

(b) (1) A corporation formed to supply water to cities or towns shall not charge, levy, assess, fix, or collect any charge, tax, fee, rate, assessment, or levy of any kind whatsoever in connection with its water system on or from any entity providing fire protection services to others for supplying water for those fire protection purposes within the service area of the corporation or for any costs of operation, installation, capital, maintenance, repair, alteration, or replacement of facilities related to supplying water for the fire protection purposes within the service area of the corporation, except pursuant to a written agreement with the entity providing fire protection services.

(2) Paragraph (1) of this subdivision does not restrict or limit a corporation formed to supply water to cities or towns from levying charges for water service or facilities, including water for fire protection purposes, on any person, property, or entity, whether public or private, other than on an entity providing fire protection service.

These charges shall be collected from other persons, property, or entities pursuant to existing provisions of law that authorize the charges, or from an entity providing fire protection services only pursuant to the written agreement authorizing the charges.

(3) For the purposes of this subdivision, "entity providing fire protection service" means a city, county, or city and county, whether general law or chartered, or a fire company, fire protection district, or any other person, association, company, corporation, district, municipal corporation, or any other public or private entity, which public or private entity or person provides fire protection services to any other public or private entity or person.

14452. Whenever any corporation, organized under the laws of this state, furnishes water to irrigate lands that the corporation has sold, the right to the flow and use of that water is and shall remain a perpetual easement to the land so sold, at any rates and terms that may be established by the corporation in pursuance of law. Whenever any person who is cultivating land on the line and within the flow of any ditch owned by the corporation, has been furnished water by it with which to irrigate his or her land, that person shall be entitled to the continued use of that water, upon the same terms as those who have purchased their land from the corporation.

SEC. 7. Part 11 (commencing with Section 14500) is added to Division 3 of Title 1 of the Corporations Code, to read:

PART 11. SOCIETIES FOR THE PREVENTION OF CRUELTY TO CHILDREN AND ANIMALS

14500. This title extends to all corporations heretofore formed and existing for the prevention of cruelty to children or animals, but do not extend or apply to any association, society, or corporation that uses or specifies a name or style of the same, or substantially the same, as that of any previously existing society or corporation in this state organized for a like purpose.

14501. Every society, incorporated and organized for the prevention of cruelty to animals, or for the prevention of cruelty to children, may, in each city, or city and county, or county, where the society exists, while actively engaged in enforcing the provisions of laws of this state, now or hereafter enacted, for the prevention of cruelty to animals, or children, or arresting, or prosecuting offenders thereunder or preventing cruelty to animals or children, be paid as compensation therefor, from the city or county, or city and county general fund, by the board of supervisors or other governing body thereof, a sum not exceeding five hundred dollars ($500) per calendar month, in the same manner as other claims against said city or county, or city and county, are paid.

14502. (a) (1) (A) (i) On and after July 1, 1996, no entity, other than a humane society or society for the prevention of cruelty to animals, shall be eligible to apply for an appointment of any individual as a level 1 or level 2 humane officer, the duty of which shall be the enforcement of the laws for the prevention of cruelty to animals.

(ii) On and after July 1, 1996, only a person who meets the requirements of this section may be appointed as, or perform the duties of, a humane officer.

(iii) Any person appointed as a humane officer prior to July 1, 1996, may continue to serve as a humane officer until the expiration of the term of appointment only if the appointing agency maintains records pursuant to subparagraph (C) documenting that both the appointing agency and the humane officer meet the requirements of this section.

(B) Each humane society or society for the prevention of cruelty to animals that makes application to the court for the appointment of an individual to act as a level 1 or level 2 humane officer for the humane society or society for the prevention of cruelty to animals shall provide with the application documentation that demonstrates that the person has satisfactorily completed the training requirements set forth in subdivision (i).

(C) Each humane society or society for the prevention of cruelty to animals for which an individual is acting as a level 1 or level 2 humane officer shall maintain complete and accurate records documenting that the individual has successfully completed all requirements established in this section and shall make those records available, upon request, to the superior court, the Attorney General, or any entity duly authorized to review that information, including the State Humane Association of California. The records shall include the full name and address of each level 1 or level 2 humane officer.

(2) Any corporation incorporated for the purpose of the prevention of cruelty to animals that possesses insurance of at least one million dollars ($1,000,000) for liability for bodily injury or property damage may, six months after the date of its incorporation and by resolution of its board of directors or trustees duly entered on its minutes, appoint any number of persons, who shall be citizens of the State of California, as humane officers, provided that the individuals to be appointed have met the training guidelines set forth in subdivision (i).

(3) Each appointment of a humane officer shall be by separate resolution. The resolution shall state the full name and address of the appointing agency, the full name of the person so appointed, and the fact that he or she is a citizen of the State of California, and shall also designate the number of the badge to be allotted to the officer.

(b) The humane society or society for the prevention of cruelty to animals shall recommend any appointee to the judge of the superior court in and for the county or city and county in which the humane society is incorporated, and shall deliver to the judge a copy of the resolution appointing the person, duly certified to be correct by the president and secretary of the corporation and attested by its seal, together with the fingerprints of the appointee taken on standard 8×8-inch cards, proof of the society's proper incorporation in compliance with Part 9 (commencing with Section 10400) of Division 2, a copy of the society's liability for bodily injury or property damage insurance policy in the amount of at least one million dollars ($1,000,000), and documentation establishing that the appointee has satisfactorily completed the training requirements set forth in this section.

(c) The judge shall send a copy of the resolution, together with the fingerprints of the appointee, to the Department of Justice, which shall thereupon submit to the judge, in writing, a report of the record in its possession, if any, of the appointee. If the Department of Justice

has no record of the appointee, it shall so report to the judge in writing.

(d) Upon receipt of the report the judge shall review the matter of the appointee's qualifications and fitness to act as a humane officer and, if he or she reaffirms the appointment, shall so state on a court order confirming the appointment. The appointee shall thereupon file a certified copy of the reviewed court order in the office of the county clerk of the county or city and county and shall, at the same time, take and subscribe the oath of office prescribed for constables or other peace officers.

(e) The county clerk shall thereupon immediately enter in a book to be kept in his or her office and designated "Record of Humane Officers" the name of the officer, the name of the agency appointing him or her, the number of his or her badge, the name of the judge appointing him or her, and the date of the filing. At the time of the filing the county clerk shall collect from the officer a fee of five dollars ($5), which shall be in full for all services to be performed by the county clerk under this section.

(f) All appointments of humane officers shall automatically expire if the society disbands or legally dissolves. In addition, all appointments of humane officers shall automatically expire within three years from the date on which the certified copy of the court order was filed with the county clerk. Officers whose appointments are about to expire may only be reappointed after satisfactorily completing the continuing education and training set forth in this section.

(g) (1) The corporation appointing an officer may revoke an appointment at any time by filing in the office of the county clerk in which the appointment of the officer is recorded a copy of the revocation in writing under the letterhead of the corporation and duly certified by its executive officer. Upon the filing the county clerk shall enter the fact of the revocation and the date of the filing thereof opposite the name of the officer in the record of humane officers.

(2) Notwithstanding paragraph (1), a revocation hearing may be initiated by petition from any duly authorized sheriff or local police agency or the State Humane Association of California. The petition shall show cause why an appointment should be revoked and shall be made to the superior court in the jurisdiction of the appointment.

(h) The corporation or local humane society appointing the humane officer shall pay the training expenses of the humane officer attending the training required pursuant to this section.

(i) (1) (A) A level 1 humane officer is not a peace officer, but may exercise the powers of a peace officer at all places within the state in order to prevent the perpetration of any act of cruelty upon any animal and to that end may summon to his or her aid any bystander. A level 1 humane officer may use reasonable force necessary to prevent the perpetration of any act of cruelty upon any animal.

(B) A level 1 humane officer may make arrests for the violation of any penal law of this state relating to or affecting animals in the same manner as any peace officer and may also serve search warrants.

(C) A level 1 humane officer is authorized to carry firearms while exercising the duties of a humane officer, upon satisfactory completion of the training specified in subparagraph (D) and the basic training for a level 1 reserve officer by the Commission on Peace Officer Standards and Training pursuant to Section 13510.1 of the Penal Code.

(D) A level 1 humane officer shall, prior to appointment, provide evidence satisfactory to the appointing agency that he or she has successfully completed courses of training in the following subjects:

(i) At least 20 hours of a course of training in animal care sponsored or provided by an accredited postsecondary institution or any other provider approved by the California Veterinary Medical Association, the focus of which shall be the identification of disease, injury, and neglect in domestic animals and livestock.

(ii) At least 40 hours of a course of training in the state humane laws relating to the powers and duties of a humane officer, sponsored or provided by an accredited postsecondary institution, law enforcement agency, or the State Humane Association of California.

(E) A person may not be appointed as a level 1 humane officer until he or she has satisfied the requirements in Sections 1029, 1030, and 1031 of the Government Code. A humane society or society for the prevention of cruelty to animals shall complete a background investigation, using standards defined by the Commission on Peace Officer Standards and Training as guidelines for all level 1 humane officer appointments.

(F) In order to be eligible for reappointment, a level 1 humane officer shall complete ongoing weapons training and range qualifications at least every six months pursuant to subdivision (s) of Section 830.3 of the Penal Code and shall, every three years, complete 40 hours of continuing education and training relating to the powers and duties of a humane officer, which education and training shall be provided by an accredited postsecondary institution, law enforcement agency, or the State Humane Association of California.

(G) (i) Notwithstanding any other provision of this section, a level 1 humane officer may carry firearms only if authorized by, and only under the terms and conditions specified by, his or her appointing agency.

(ii) Notwithstanding any other provision of this section, a level 1 humane officer shall not be authorized to carry firearms unless and until his or her appointing agency has adopted a policy on the use of deadly force by its officers and the officer has been instructed in that policy.

(2) (A) A level 2 humane officer is not a peace officer, but may exercise the powers of a peace officer at all places within the state in order to prevent the perpetration of any act of cruelty upon any

animal and to that end may summon to his or her aid any bystander. A level 2 humane officer may use reasonable force necessary to prevent the perpetration of any act of cruelty upon any animal.

(B) A level 2 humane officer may make arrests for the violation of any penal law of this state relating to or affecting animals in the same manner as any peace officer and may serve search warrants during the course and within the scope of employment, upon the successful completion of a course relating to the exercise of the police powers specified in Section 832 of the Penal Code, except the power to carry and use firearms.

(C) A level 2 humane officer is not authorized to carry firearms.

(D) A level 2 humane officer shall, prior to appointment, provide evidence satisfactory to the appointing agency that he or she has successfully completed courses of training in the following subjects:

(i) At least 20 hours of a course of training in animal care sponsored or provided by an accredited postsecondary institution or any other provider approved by the California Veterinary Medical Association, the focus of which is the identification of disease, injury, and neglect in domestic animals and livestock.

(ii) At least 40 hours of a course of training in the state humane laws relating to the powers and duties of a humane officer, sponsored or provided by an accredited postsecondary institution, law enforcement agency, or the State Humane Association of California.

(E) In order to be eligible for reappointment, a level 2 humane officer shall, every three years, complete 40 hours of continuing education and training relating to the powers and duties of a humane officer, which education and training shall be provided by an accredited postsecondary institution, law enforcement agency, or the State Humane Association of California.

(j) Every humane officer shall, when making an arrest, exhibit and expose a suitable badge to be adopted by the corporation under this title of which he or she is a member which shall bear its name and a number. Uniforms worn by humane officers shall prominently display the name of the appointing agency. Humane officer uniforms shall not display the words "state" or "California," unless part of the appointing agency's incorporated name.

(k) Any person resisting a humane officer in the performance of his or her duty as provided in this section, is guilty of a misdemeanor. Any person who has not been appointed and qualified as a humane officer as provided in this section, or whose appointment has been revoked as provided in this section, or whose appointment, having expired, has not been renewed as provided in this section, who shall represent himself or herself to be or shall attempt to act as an officer shall be guilty of a misdemeanor.

(*l*) No humane officer shall serve a search warrant without providing prior notice to local law enforcement agencies operating within that jurisdiction.

(m) Any humane society, society for the prevention of cruelty to animals, or person, who knowingly provides a court with false or forged documentation for the appointment of a humane officer, is guilty of a misdemeanor and shall be punished by a fine of up to ten thousand dollars ($10,000).

(n) A humane society or a society for the prevention of cruelty to animals shall notify the sheriff of the county in which the society is incorporated, prior to appointing a humane officer, of the society's intent to enforce laws for the prevention of cruelty to animals. Humane societies or societies for the prevention of cruelty to animals incorporated and enforcing animal cruelty laws prior to January 1, 1996, that intend to continue to enforce those laws, shall notify the sheriff of the county in which the society is incorporated by March 1, 1996.

(o) Except as otherwise provided by this section, a humane officer shall serve only in the county in which he or she is appointed. A humane officer may serve temporarily in a county other than that in which he or she is appointed if the humane officer gives notice requesting consent to the sheriff of the county in which he or she intends to serve, and acquires consent from the sheriff of the county in which he or she intends to serve, or from a person authorized by the sheriff to give that consent. A sheriff shall promptly respond to any request by a humane officer to serve in his or her jurisdiction and any request shall not be unreasonably denied.

14503. The governing body of a local agency, by ordinance, may authorize employees of public pounds, societies for the prevention of cruelty to animals, and humane societies, who have qualified as humane officers pursuant to Section 14502, and which societies or pounds have contracted with such local agency to provide animal care or protection services, to issue notices to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code for violations of state or local animal control laws. Those employees shall not be authorized to take any person into custody even though the person to whom the notice is delivered does not give his or her written promise to appear in court. The authority of these employees is to be limited to the jurisdiction of the local agency authorizing the employees.

SEC. 8. Part 12 (commencing with Section 14550) is added to Division 3 of Title 1 of the Corporations Code, to read:

PART 12. NONPROFIT COOPERATIVE AGRICULTURAL MARKETING ASSOCIATIONS

14550. In order to promote, foster, and encourage the intelligent and orderly marketing of agricultural products through cooperation; to eliminate speculation and waste; to make the distribution of agricultural products between producer and consumer as direct as

can be efficiently done; and to stabilize the marketing of agricultural products, this act is passed.

14551. It is here recognized that agriculture is characterized by individual production in contrast to the group or factory system that characterizes other forms of industrial production; and that the ordinary form of corporate organization permits industrial groups to combine for the purpose of group production and the ensuing group marketing; and that the public has an interest in permitting farmers to bring their industry to the high degree of efficiency and merchandising skill evidenced in the manufacturing industries; and that the public interest urgently needs to prevent the migration from the farm to the city in order to keep up farm production and to preserve the agricultural supply of the nation; and that the public interest demands that the farmer be encouraged to attain a superior and more direct system of marketing in the substitution of merchandising for the blind, unscientific, and speculative selling of crops.

SEC. 9. Section 25100 of the Corporations Code is amended to read:

25100. The following securities are exempted from Sections 25110, 25120, and 25130:

(a) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state or any agency or corporate or other instrumentality of any one or more of the foregoing; or any certificate of deposit for any of the foregoing.

(b) Any security issued or guaranteed by 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, restraining order or writ of mandate shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets.

(2) The commissioner may, in the commissioner's discretion, (A) make 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.

(u) Any security issued by an issuer registered as an open-end management company or unit investment trust under the Investment Company Act of 1940, provided that all of the following requirements are met:

(1) The registration statement for the securities is currently effective under the Securities Act of 1933.

(2) Prior to any offer or sale in this state of securities claimed to be exempt under this subdivision, there is filed with or paid to the commissioner each of the following:

(A) A notice of intention to sell that has been executed by the issuer and that includes the name and address of the issuer and the name of the securities to be offered and sold under this subdivision.

(B) A copy of the current prospectus to be used in the offer and sale of the security.

(C) The fee provided in subdivision (f) of Section 25608.

If any offer or sale is made pursuant to this exemption more than 12 months after the date the notice was filed under this subdivision, the issuer shall file another notice of intention to sell, a copy of the prospectus the issuer is currently utilizing for the purpose of making that offer, and the fee specified in subparagraph (C) of paragraph (2).

SEC. 9.5. 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 as 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. 10. Section 25988 of the Health and Safety Code is amended to read:

25988. A peace officer, officer of a humane society as qualified under Section 14502 or 14503 of the Corporations Code, or officer of an animal control or animal regulation department of a public agency, as qualified under Section 830.9 of the Penal Code, may issue a citation as prescribed in Section 25988.5, to any person or entity keeping horses or other equine animals for hire, if the person or entity fails to meet any of the following standards of humane treatment regarding the keeping of horses or other equine animals:

(a) Any enclosure where an equine is primarily kept shall be of sufficient size to enable the equine to comfortably stand up, turn around, and lie down, and shall be kept free of excessive urine and waste matter.

(b) Paddocks and corrals shall be of adequate size for the equine to move about freely.

(c) Buildings, premises, and conveyances used in conjunction with equines shall be kept free of sharp objects, protrusions, or other materials that are likely to cause injury.

(d) Equines shall be supplied with nutritionally adequate feed and clean water, in accordance with standards published by the Cooperative Extension of the Division of Agricultural Sciences of the University of California.

(e) Tack and equipment shall be appropriate and fit properly.

(f) After use the equine shall be cooled out to a normal condition at rest.

(g) When not being ridden, a saddled equine shall have available adequate shelter from the elements, and have loosened saddle straps and girths.

(h) An equine shall not be available for hire or use if the equine has any conditions that violate subdivision (b) of Section 597 or Section 597f of the Penal Code or any of the following conditions:

(1) Sores or abrasions caused or likely to be irritated by the surfaces of saddles, girths, harnesses, or bridles.

(2) Blindness in both eyes.

(3) Improperly or inadequately trimmed and shod feet contrary to the standards published by the Cooperative Extension of the Division of Agricultural Sciences of the University of California.

(i) Each equine shall be individually identified, using humane methods, such as a detailed description, including, but not limited to, name, breed, color, markings, size, age, sex, and photograph.

(j) Farrier and veterinary receipts shall be kept and shall identify each equine treated.

(k) Veterinary, farrier, and feed records shall be made available during normal business hours to the law enforcement officer. Upon failure to provide these records, the equine or equines in question may not be used for hire until such time as the records are produced or an equine veterinarian shall certify that the equine or equines are fit for labor.

SEC. 11. Section 597d of the Penal Code is amended to read:

597d. Any sheriff, police, or peace officer, or officer qualified as provided in Section 14502 of the Corporations Code, may enter any place, building, or tenement, where there is an exhibition of the fighting of birds or animals, or where preparations are being made for such an exhibition, and, without a warrant, arrest all persons present.

SEC. 12. Section 597z of the Penal Code is amended to read:

597z. A humane officer appointed under Section 14502 of the Corporations Code or the State Sealer may enter any facility utilizing a carbon monoxide gas chamber for the purpose of inspecting the operation of such facility to determine whether there is compliance with Section 597u.

SEC. 13. Section 11105 of the Penal Code is amended to read:

11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(i) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, fingerprints, photographs, date of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.

(ii) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to any of the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state as defined in Section 830.1, subdivisions (a), (b), and (f) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.31.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.
(5) Probation officers of the state.
(6) Parole officers of the state.
(7) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.
(8) A public defender or attorney of record when representing a person in a criminal case and if authorized access by statutory or decisional law.
(9) Any agency, officer, or official of the state if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.
(10) Any city or county, or city and county, or district, or any officer, or official thereof if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.
(11) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120) of Chapter 1 of Title 1 of Part 4.
(12) Any person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.
(13) Health officers of a city, county, or city and county, or district, when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.
(14) Any managing or supervising correctional officer of a county jail or other county correctional facility.
(15) Any humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 14502 of the Corporations Code for the appointment of level 1 humane officers.
(c) The Attorney General may furnish state summary criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist

an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) Any public utility as defined in Section 216 of the Public Utilities Code that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data, he or she shall furnish a copy of the data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To a peace officer of another country.

(4) To public officers (other than peace officers) of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States if the information is needed for the performance of their official duties.

(5) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(6) The courts of the United States, other states, or territories or possessions of the United States.

(7) Peace officers of the United States, other states, or territories or possessions of the United States.

(8) To any individual who is the subject of the record requested if needed in conjunction with an application to enter the United States or any foreign nation.

(9) Any public utility as defined in Section 216 of the Public Utilities Code, if access is needed in order to assist in employing current or prospective employees who in the course of their employment may be seeking entrance to private residences. The information provided shall be limited to the record of convictions and any arrest for which the person is released on bail or on his or her own recognizance pending trial.

If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

Any information obtained from the state summary criminal history is confidential and the receiving public utility shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the public utility and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on his or her own recognizance pending

trial, in which case the state summary criminal history information and all copies shall be destroyed not more than 30 days after the case is resolved.

A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility to recover damages proximately caused by the violations. Any public utility's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

Nothing in this section shall be construed as imposing any duty upon public utilities to request state summary criminal history information on any current or prospective employees.

(10) To any campus of the California State University or the University of California, or any four-year college or university accredited by a regional accreditation organization approved by the United States Department of Education, if needed in conjunction with an application for admission by a convicted felon to any special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department under this section shall include the convicted felon's fingerprints and any other information specified by the department.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, any person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 12054 of the Penal Code, and Section 13588 of the Education Code

shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7514 of the Business and Professions Code shall take priority over the processing of applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(i) Notwithstanding any other law, the Department of Justice or any state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting summary criminal history information checks that are authorized by law.

(j) The state summary criminal history information shall include any finding of mental incompetence pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 arising out of a complaint charging a felony offense specified in Section 290.

SEC. 14. Section 11165.16 of the Penal Code is amended to read:

11165.16. (a) For the purposes of this article, the following terms have the following meanings:

(1) "Animal control officer" means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(2) "Humane society officer" means any person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(b) No firefighter, animal control officer, or humane society officer shall be subject to the reporting requirements of this article unless he or she has received training in identification and reporting of child abuse equivalent to that received by teachers and child care custodians.

SEC. 15. Section 12031 of the Penal Code is amended to read:

12031. (a) (1) A person is guilty of carrying a loaded firearm when he or she carries a loaded firearm on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory.

(2) Carrying a loaded firearm in violation of this section is punishable, as follows:

(A) Where the person previously has been convicted of any felony, or of any crime made punishable by this chapter, as a felony.

(B) Where the firearm is stolen and the person knew or had reasonable cause to believe that it was stolen, as a felony.

(C) 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 18620) of Title 7 of Part 1), as a felony.

(D) Where the person is not in lawful possession of the firearm, as defined in this section, or 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.

(E) 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.

(F) In all cases other than those specified in subparagraphs (A) to (E), 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.

(G) 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.

(3) Nothing in this section shall preclude prosecution under Sections 12021 and 12021.1 of this code, Section 8100 or 8103 of the Welfare and Institutions Code, or any other law with a greater penalty than this section.

(4) Notwithstanding paragraphs (2) and (3) of subdivision (a) of Section 836, a peace officer may make an arrest without a warrant:

(A) When the person arrested has violated this section, although not in the officer's presence.

(B) Whenever the officer has reasonable cause to believe that the person to be arrested has violated this section, whether or not this section has, in fact, been violated.

(5) (A) Every person convicted under this section who has previously been convicted of an offense enumerated in Section 12001.6, or of any crime made punishable under this chapter, shall serve a term of at least three months in a county jail, 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 for a period of at least three months.

(B) The court shall apply the three-month minimum sentence 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 this subdivision or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in this subdivision, 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 that disposition.

(6) A violation of this section which is punished by imprisonment in a county jail not exceeding one year shall not constitute a conviction of a crime punishable by imprisonment for a term exceeding one year for the purposes of determining federal firearms eligibility under Section 922(g)(1) of Title 18 of the United States Code.

(b) Subdivision (a) shall not apply to any of the following:

(1) Peace officers listed in Section 830.1 or 830.2, whether active or honorably retired, other duly appointed peace officers, honorably retired peace officers listed in subdivision (c) of Section 830.5, other honorably retired peace officers who during the course and scope of their employment as peace officers were authorized to, and did, carry firearms, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or any person summoned by any of those officers to assist in making arrests or preserving the peace while the person is actually engaged in assisting that officer. Any peace officer described in this paragraph who has been honorably retired shall be issued an identification certificate by the law enforcement agency from which the officer has retired. The issuing agency may charge a fee necessary to cover any reasonable expenses incurred by the agency in issuing certificates pursuant to this paragraph and paragraph (3).

Any officer, except an officer listed in Section 830.1, 830.2, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall have an endorsement on the identification certificate stating that the issuing agency approves the officer's carrying of a loaded firearm.

No endorsement or renewal endorsement issued pursuant to paragraph (2) shall be effective unless it is in the format set forth in subparagraph (D) of paragraph (1) of subdivision (a) of Section 12027, except that any peace officer listed in subdivision (f) of Section 830.2 or in subdivision (c) of Section 830.5, who is retired between January 2, 1981, and on or before December 31, 1988, and who is authorized to carry a loaded firearm pursuant to this section, shall not be required to have an endorsement in the format set forth in subparagraph (D) of paragraph (1) of subdivision (a) of Section

12027 until the time of the issuance, on or after January 1, 1989, of a renewal endorsement pursuant to paragraph (2).

(2) A retired peace officer, except an officer listed in Section 830.1, 830.2, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall petition the issuing agency for renewal of his or her privilege to carry a loaded firearm every five years. An honorably retired peace officer listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall not be required to obtain an endorsement from the issuing agency to carry a loaded firearm. The agency from which a peace officer is honorably retired may, upon initial retirement of the peace officer, or at any time subsequent thereto, deny or revoke, for good cause, the retired officer's privilege to carry a loaded firearm. A peace officer who is listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5 who is retired prior to January 1, 1981, shall have his or her privilege to carry a loaded firearm denied or revoked by having the agency from which the officer retired stamp on the officer's identification certificate "No CCW privilege."

(3) An honorably retired peace officer who is listed in subdivision (c) of Section 830.5 and authorized to carry loaded firearms by this subdivision shall meet the training requirements of Section 832 and shall qualify with the firearm at least annually. The individual retired peace officer shall be responsible for maintaining his or her eligibility to carry a loaded firearm. The Department of Justice shall provide subsequent arrest notification pursuant to Section 11105.2 regarding honorably retired peace officers listed in subdivision (c) of Section 830.5 to the agency from which the officer has retired.

(4) Members of the military forces of this state or of the United States engaged in the performance of their duties.

(5) Persons who are using target ranges for the purpose of practice shooting with a firearm or who are members of shooting clubs while hunting on the premises of those clubs.

(6) The carrying of pistols, revolvers, or other firearms capable of being concealed upon the person by persons who are authorized to carry those weapons pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4.

(7) Armored vehicle guards, as defined in Section 7521 of the Business and Professions Code, (A) if hired prior to January 1, 1977; or (B) if hired on or after that date, if they have received a firearms qualification card from the Department of Consumer Affairs, in each case while acting within the course and scope of their employment.

(8) Upon approval of the sheriff of the county in which they reside, honorably retired federal officers or agents of federal law enforcement agencies, including, but not limited to, the Federal Bureau of Investigation, the Secret Service, the United States Customs Service, the Federal Bureau of Alcohol, Tobacco, and Firearms, the Federal Bureau of Narcotics, the Drug Enforcement Administration, the United States Border Patrol, and officers or

agents of the Internal Revenue Service who were authorized to carry weapons while on duty, who were assigned to duty within the state for a period of not less than one year, or who retired from active service in the state.

Retired federal officers or agents shall provide the sheriff with certification from the agency from which they retired certifying their service in the state, the nature of their retirement, and indicating the agency's concurrence that the retired federal officer or agent should be accorded the privilege of carrying a loaded firearm.

Upon approval, the sheriff shall issue a permit to the retired federal officer or agent indicating that he or she may carry a loaded firearm in accordance with this paragraph. The permit shall be valid for a period not exceeding five years, shall be carried by the retiree while carrying a loaded firearm, and may be revoked for good cause.

The sheriff of the county in which the retired federal officer or agent resides may require recertification prior to a permit renewal, and may suspend the privilege for cause. The sheriff may charge a fee necessary to cover any reasonable expenses incurred by the county.

(c) Subdivision (a) shall not apply to any of the following who have completed a regular course in firearms training approved by the Commission on Peace Officer Standards and Training:

(1) 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, (A) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (B) are not less than 18 years of age or more than 40 years of age, (C) possess physical qualifications prescribed by the commission, and (D) 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.

(2) The carrying of weapons by animal control officers or zookeepers, regularly compensated as such by a governmental agency when acting in the course and scope of their employment and when designated by a local ordinance or, if the governmental agency is not authorized to act by ordinance, by a resolution, either individually or by class, to carry the weapons, or by persons who are authorized to carry the weapons pursuant to Section 14502 of the Corporations Code, while actually engaged in the performance of their duties pursuant to that section.

(3) Harbor police officers designated pursuant to Section 663.5 of the Harbors and Navigation Code.

(d) Subdivision (a) shall not apply to any of the following who have been issued a certificate pursuant to Section 12033. The certificate shall not be required of any person who is a peace officer, who has completed all training required by law for the exercise of his or her power as a peace officer, and who is employed while not on duty as a peace officer.

(1) Guards or messengers of common carriers, banks, and other financial institutions 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.

(2) Guards of contract carriers operating armored vehicles pursuant to California Highway Patrol and Public Utilities Commission authority (A) if hired prior to January 1, 1977; or (B) if hired on or after January 1, 1977, if they have completed a course in the carrying and use of firearms which meets the standards prescribed by the Department of Consumer Affairs.

(3) Private investigators and private patrol operators who are licensed pursuant to Chapter 11.5 (commencing with Section 7512) of, and alarm company operators who are licensed pursuant to Chapter 11.6 (commencing with Section 7590) of, Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(4) Uniformed security guards or night watch persons employed by any public agency, while acting within the scope and course of their employment.

(5) Uniformed security guards, regularly employed and compensated in that capacity by persons engaged in any lawful business, and uniformed alarm agents employed by an alarm company operator, while actually engaged in protecting and preserving the property of their employers or on duty or en route to or from their residences or their places of employment, and security guards and alarm agents en route to or from their residences or employer-required range training. Nothing in this paragraph shall be construed to prohibit cities and counties from enacting ordinances requiring alarm agents to register their names.

(6) Uniformed employees of private patrol operators and private investigators licensed pursuant to Chapter 11.5 (commencing with Section 7512) of Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(e) In order to determine whether or not a firearm is loaded for the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to this section constitutes probable cause for arrest for violation of this section.

(f) As used in this section, "prohibited area" means any place where it is unlawful to discharge a weapon.

(g) A firearm shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell, consisting of a case that holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the

firearm; except that a muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.

(h) Nothing in this section shall prevent any person engaged in any lawful business, including a nonprofit organization, or any officer, employee, or agent authorized by that person for lawful purposes connected with that business, from having a loaded firearm within the person's place of business, or any person in lawful possession of private property from having a loaded firearm on that property.

(i) Nothing in this section shall prevent any person from carrying a loaded firearm in an area within an incorporated city while engaged in hunting, provided that the hunting at that place and time is not prohibited by the city council.

(j) (1) Nothing in this section is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that the person or property of himself or herself or of another is in immediate, grave danger and that the carrying of the weapon is necessary for the preservation of that person or property. As used in this subdivision, "immediate" means the brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance.

(2) A violation of this section is justifiable when a person who possesses a firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety. This paragraph may not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person's life or safety. It is not the intent of the Legislature to limit, restrict, or narrow the application of current statutory or judicial authority to apply this or other justifications to defendants charged with violating Section 12025 or of committing other similar offenses.

Upon trial for violating this section, the trier of fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

(k) Nothing in this section is intended to preclude the carrying of a loaded firearm by any person while engaged in the act of making or attempting to make a lawful arrest.

(*l*) Nothing in this section shall prevent any person from having a loaded weapon, if it is otherwise lawful, at his or her place of residence, including any temporary residence or campsite.

SEC. 16. Section 12583 of the Penal Code is amended to read:

12583. Nothing in this article shall prohibit the sale to, purchase by, possession of, or use of blowguns or blowgun ammunition by

zookeepers, animal control officers, Department of Fish and Game personnel, humane officers whose names are maintained in the county record of humane officers pursuant to Section 14502 of the Corporations Code, or veterinarians in the course and scope of their business in order to administer medicine to animals.

SEC. 17. It is the intent of the Legislature that Chapter 2 (commencing with Section 14310) of Part 7 of Division 3 of Title 1 of the Corporations Code as added by the act enacting this section shall not be construed to alter the laws regarding service areas of public water utilities regulated by the Public Utilities Commission.

SEC. 18. Section 9.5 of this bill incorporates amendments to Section 25100 of the Corporations Code proposed by both this bill and AB 721. 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 AB 721, in which case Section 9 of this bill shall not become operative.

CHAPTER 599

An act to amend Sections 689.030, 695.221, 697.320, 704.130, and 706.030 of the Code of Civil Procedure, to amend Sections 3651, 3751.5, 3767, 4014, 4200, 4201, 4506.2, 4506.3, 5100, 5101, 5206, 5230, 5232, 5234, 5235, 5237, 5238, 5240, 5246, 5253, 7551, 7552, 7552.5, 7555, 7571, 7572, 7575, and 10005 of, to add Sections 3773, 4204, 5201, 5230.1, 5247, 7558, and 7604.5 to, to add Article 9 (commencing with Section 5600) to Chapter 8 of Division 9 of, and to repeal Sections 3780, 3781, 3782, and 5283 of, the Family Code, to amend Section 102425 of the Health and Safety Code, to add Section 19271.5 to the Revenue and Taxation Code, to add Section 1088.7 to the Unemployment Insurance Code, and to amend Sections 11350.1, 11350.6, 11350.7, 11352, 11356, 11478, 11478.1, 11478.2, 11478.5, 11478.51, 11478.8, 11489, and 14008.6 of, and to add Sections 11475.15, 11478.9, and 14008.7 to, the Welfare and Institutions Code, relating to child support.

[Approved by Governor October 1, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Section 689.030 of the Code of Civil Procedure is amended to read:

689.030. (a) Whenever the district attorney, pursuant to Section 11350.7 of the Welfare and Institutions Code, levies upon property pursuant to a warrant or notice of levy for the collection of a support obligation:

(1) If the debtor is a natural person, the debtor is entitled to the same exemptions to which a judgment debtor is entitled. Except as provided in subdivisions (b) and (c), the claim of exemption shall be made, heard, and determined as provided in Chapter 4 (commencing with Section 703.010) of Division 2 in the same manner as if the property were levied upon under a writ of execution.

(2) A third person may claim ownership or the right to possession of the property or a security interest in or lien on the property. Except as provided in subdivisions (b) and (c) or as otherwise provided by statute, the third-party claim shall be made, heard, and determined as provided in Division 4 (commencing with Section 720.010) in the same manner as if the property were levied upon under a writ of execution.

(b) In the case of a warrant or notice of levy issued pursuant to Section 11350.7 of the Welfare and Institutions Code, the claim of exemption or the third-party claim shall be filed with the district attorney who issued the warrant or notice of levy.

(c) A claim of exemption or a third-party claim pursuant to this section shall be heard and determined in the court specified in Section 689.010 in the county where the district attorney enforcing the support obligation is located.

SEC. 2. Section 695.221 of the Code of Civil Procedure is amended to read:

695.221. Satisfaction of a money judgment for support shall be credited as follows:

(a) The money shall first be credited against the current month's support.

(b) Any remaining money is next to be credited against the accrued interest that remains unsatisfied.

(c) Any remaining money shall be credited against the principal amount of the judgment remaining unsatisfied. If the judgment is payable in installments, the remaining money shall be credited against the matured installments in the order in which they matured.

(d) In cases enforced pursuant to Part D (commencing with Section 651) of Subchapter 4 of Chapter 7 of Title 42 of the United States Code, if a lump-sum payment is collected from a support obligor who has money judgments for support owing to more than one family, after the implementation of the Statewide Automated Child Support System, or its replacement, and the interface system between the Statewide Automated Child Support Enforcement System, or its replacement, and the Los Angeles County Automated Child Support Enforcement System (ACSES Replacement System), all support collected shall be distributed pursuant to guidelines developed by the State Department of Social Services.

(e) Notwithstanding subdivisions (a), (b), and (c), a collection received as a result of a federal tax refund offset shall first be credited against the interest and then the principal amount of past due support that has been assigned to the state pursuant to Section 11477

of the Welfare and Institutions Code and federal law prior to the interest and then principal amount of any other past due support remaining unsatisfied.

(f) If federal law does not permit states to adopt the same order of distribution for the pre- and post-assistance child support arrears effective October 1, 1998, the following shall be the order of distribution of child support collections through September 30, 2000, except for federal tax refund offset collections, for child support received for families and children who are former recipients of Aid to Families with Dependent Children (AFDC) program benefits or former recipients of Temporary Assistance for Needy Families (TANF) program benefits:

(1) The money shall first be credited against the current month's support.

(2) Any remaining money shall next be credited against interest that accrued on arrearages owed to the family or children since leaving the AFDC program or the TANF program and then such arrearages.

(3) Any remaining money shall next be credited against interest that accrued on arrearages owed during the time the family or children received benefits under the AFDC program or the TANF program and then such arrearages.

(4) Any remaining money shall next be credited against interest that accrued on arrearages owed to the family or children prior to receiving benefits from the AFDC program or the TANF program and then such arrearages.

(g) If federal law does permit states to adopt the same order of distribution for the pre- and post-assistance child support arrears effective October 1, 1998, or effective October 1, 2000, whichever comes first, the following shall be the order of distribution of child support collections, except for federal tax refund offset collections, for child support received for families and children who are former recipients of AFDC program benefits or former recipients of TANF program benefits:

(1) The money shall first be credited against the current month's support.

(2) Any remaining money shall next be credited against interest that accrued on arrearages owed to the family or children since leaving the AFDC program or the TANF program and then such arrearages.

(3) Any remaining money shall next be credited against interest that accrued on arrearages owed to the family or children prior to receiving benefits from the AFDC program or the TANF program and then such arrearages.

(4) Any remaining money shall next be credited against interest that accrued on arrearages owed during the time the family or children received benefits under the AFDC program or the TANF program and then such arrearages.

SEC. 3. Section 697.320 of the Code of Civil Procedure is amended to read:

697.320. (a) A judgment lien on real property is created under this section by recording an abstract, an interstate lien form promulgated by the federal Secretary of Health and Human Services pursuant to Section 652(a)(11) of Title 42 of the United States Code, or a certified copy of either of the following money judgments with the county recorder:

(1) A judgment for child, family, or spousal support payable in installments.

(2) A judgment entered pursuant to Section 667.7 (judgment against health care provider requiring periodic payments).

(b) Unless the money judgment is satisfied or the judgment lien is released, a judgment lien created under paragraph (1) of subdivision (a) or by recording an interstate lien form, as described in subdivision (a), continues during the period the judgment remains enforceable. Unless the money judgment is satisfied or the judgment lien is released, a judgment lien created under paragraph (2) of subdivision (a) continues for a period of 10 years from the date of its creation. The duration of a judgment lien created under paragraph (2) of subdivision (a) may be extended any number of times by recording during the time the judgment lien is in existence a certified copy of the judgment in the manner provided in this section for the initial recording; this rerecording has the effect of extending the duration of the judgment lien created under paragraph (2) of subdivision (a) until 10 years from the date of the rerecording.

SEC. 4. Section 704.130 of the Code of Civil Procedure is amended to read:

704.130. (a) Before payment, benefits from a disability or health insurance policy or program are exempt without making a claim. After payment, the benefits are exempt.

(b) Subdivision (a) does not apply to benefits that are paid or payable to cover the cost of health care if the judgment creditor is a provider of health care whose claim is the basis on which the benefits are paid or payable.

(c) During the payment of disability benefits described in subdivision (a) to a judgment debtor under a support judgment, the judgment creditor or district attorney may seek to apply the benefit payments to satisfy the judgment by an earnings assignment order for support, as defined in Section 706.011, or any other applicable enforcement procedure, but the amount to be withheld pursuant to the earnings assignment order or other procedure shall not exceed the amount permitted to be withheld on an earnings assignment order for support under Section 706.052.

SEC. 5. Section 706.030 of the Code of Civil Procedure is amended to read:

706.030. (a) A "withholding order for support" is an earnings withholding order issued on a writ of execution to collect delinquent

amounts payable under a judgment for the support of a child, or spouse or former spouse, of the judgment debtor. A withholding order for support shall be denoted as such on its face.

(b) The district attorney may issue a withholding order for support on a notice of levy pursuant to Section 11350.7 of the Welfare and Institutions Code to collect a support obligation.

(1) When the district attorney issues a withholding order for support, a reference in this chapter to a levying officer is deemed to mean the district attorney who issues the withholding order for support.

(2) Service of a withholding order for support issued by the district attorney may be made by first-class mail or in any other manner described in Section 706.101. Service of a withholding order for support issued by the district attorney is complete when it is received by the employer or a person described in paragraph (1) or (2) of subdivision (a) of Section 706.101, or if service is by first-class mail, service is complete as specified in Section 1013.

(3) The district attorney shall serve upon the employer the withholding order for support, a copy of the order, and a notice informing the support obligor of the effect of the order and of his or her right to hearings and remedies provided in this chapter and in the Welfare and Institutions Code. The notice shall be accompanied by the forms necessary to obtain an administrative review and a judicial hearing and instructions on how to file the forms. Within 10 days from the date of service, the employer shall deliver to the support obligor a copy of the withholding order for support, the forms to obtain an administrative review and judicial hearing, and the notice. If the support obligor is no longer employed by the employer and the employer does not owe the support obligor any earnings, the employer shall inform the district attorney that the support obligor is no longer employed by the employer.

(4) An employer who fails to comply with paragraph (3) shall be subject to a civil penalty of five hundred dollars ($500) for each occurrence.

(5) The district attorney shall provide for an administrative review to reconsider or modify the amount to be withheld for arrearages pursuant to the withholding order for support, if the support obligor requests a review at any time after service of the withholding order. The review shall be completed within 15 working days after the request is received by the district attorney. The district attorney shall notify the employer if the review results in any modifications to the withholding order for support. If the district attorney cannot complete the administrative review within 15 working days, the district attorney shall notify the employer to suspend withholding any disputed amount pending the completion of the review and the determination by the district attorney.

(6) Nothing in this section prohibits the support obligor from seeking a judicial determination of arrearages pursuant to

subdivision (c) of Section 11350.8 of the Welfare and Institutions Code or from filing a motion for equitable division of earnings pursuant to Section 706.052 either prior to or after the administrative review provided by this section. Within five business days after receiving notice of the obligor having filed for judicial relief pursuant to this section, the district attorney shall notify the employer to suspend withholding any disputed amount pending a determination by the court. The employer shall then adjust the withholding within not more than nine days of receiving the notice from the district attorney.

(c) Notwithstanding any other provision of this chapter:

(1) An employer shall continue to withhold pursuant to a withholding order for support until the earliest of the dates specified in paragraph (1), (2), or (3) of subdivision (a) of Section 706.022, except that a withholding order for support shall automatically terminate one year after the employment of the employee by the employer terminates.

(2) A withholding order for support has priority over any other earnings withholding order. An employer upon whom a withholding order for support is served shall withhold and pay over earnings of the employee pursuant to such order notwithstanding the requirements of another earnings withholding order.

(3) Subject to paragraph (2) and to Article 3 (commencing with Section 706.050), an employer shall withhold earnings pursuant to both a withholding order for support and another earnings withholding order simultaneously.

(4) An employer who willfully fails to withhold and forward support pursuant to a valid earnings withholding order for support issued and served upon the employer pursuant to this chapter is liable to the support obligee, as defined in Section 5214 of the Family Code, for the amount of support not withheld, forwarded, or otherwise paid to the support obligee.

(5) Notwithstanding any other provision of law, an employer shall send all earnings withheld pursuant to a withholding order for support to the levying officer or the Child Support Centralized Collection and Distribution Unit as described in Section 11475.4 of the Welfare and Institutions Code within the time period specified by federal law.

(6) Once the Child Support Centralized Collection and Distribution Unit as described in Section 11475.4 of the Welfare and Institutions Code is operational, all support payments made pursuant to an earnings withholding order shall be made to that unit.

(7) Earnings withheld pursuant to an earnings withholding order for support shall be credited toward satisfaction of a support judgment as specified in Section 695.221.

SEC. 6. Section 3651 of the Family Code is amended to read:

3651. (a) Except as provided in subdivisions (c) and (d) and subject to Article 3 (commencing with Section 3680) and Sections

3552, 3587, and 4004, a support order may be modified or terminated at any time as the court determines to be necessary.

(b) Upon the filing of a supplemental complaint pursuant to Section 2330.1, a child support order in the original proceeding may be modified in conformity with the statewide uniform guideline for child support to provide for the support of all of the children of the same parents who were named in the initial and supplemental pleadings, to consolidate arrearages and wage assignments for children of the parties, and to consolidate orders for support.

(c) Except as provided in subdivision (b), a support order may not be modified or terminated as to an amount that accrued before the date of the filing of the notice of motion or order to show cause to modify or terminate.

(d) An order for spousal support may not be modified or terminated to the extent that a written agreement, or, if there is no written agreement, an oral agreement entered into in open court between the parties, specifically provides that the spousal support is not subject to modification or termination.

(e) This section applies whether or not the support order is based upon an agreement between the parties.

(f) This section is effective only with respect to a property settlement agreement entered into on or after January 1, 1970, and does not affect an agreement entered into before January 1, 1970, as to which Chapter 1308 of the Statutes of 1967 shall apply.

SEC. 7. Section 3751.5 of the Family Code is amended to read:

3751.5. (a) Notwithstanding any other provision of law, an employer or insurer shall not deny enrollment of a child under the health insurance coverage of a child's parent on any of the following grounds:

(1) The child was born out of wedlock.

(2) The child is not claimed as a dependent on the parent's federal income tax return.

(3) The child does not reside with the parent or in the insurer's service area.

(b) Notwithstanding any other provision of law, in any case in which a parent is required by a court or administrative order to provide health insurance coverage for a child and the parent is eligible for family health coverage through an employer or an insurer, the employer or insurer shall do all of the following, as applicable:

(1) Permit the parent to enroll under health insurance coverage any child who is otherwise eligible to enroll for that coverage, without regard to any enrollment period restrictions.

(2) If the parent is enrolled in health insurance coverage but fails to apply to obtain coverage of the child, enroll that child under the health coverage upon presentation of the court order or request by the district attorney, the other parent or person having custody of the child, or the Medi-Cal program.

(3) The employer or insurer shall not disenroll or eliminate coverage of a child unless either of the following applies:

(A) The employer has eliminated family health insurance coverage for all of the employer's employees.

(B) The employer or insurer is provided with satisfactory written evidence that either of the following apply:

(i) The court order or administrative order is no longer in effect or is terminated pursuant to Section 3770.

(ii) The child is or will be enrolled in comparable health insurance coverage through another insurer that will take effect not later than the effective date of the child's disenrollment.

(c) In any case in which health insurance coverage is provided for a child pursuant to a court or administrative order, the insurer shall do all of the following:

(1) Provide any information that may be necessary for the child to obtain benefits through the coverage to both parents or the person having custody of the child and to the district attorney when requested by the district attorney.

(2) Permit the noncovered parent or person having custody of the child, or a provider with the approval of the noncovered parent or person having custody, to submit claims for covered services without the approval of the covered parent.

(3) Make payment on claims submitted in accordance with subparagraph (2) directly to the noncovered parent or person having custody, the provider, or to the Medi-Cal program. Payment on claims for services to the child shall be made to the covered parent for claims submitted or paid by the covered parent.

(d) For purposes of this section, "insurer" includes every health care service plan, self-insured welfare benefit plan, including those regulated pursuant to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001, et seq.), self-funded employer plan, disability insurer, nonprofit hospital service plan, labor union trust fund, employer, and any other similar plan, insurer, or entity offering a health coverage plan.

(e) For purposes of this section, "person having custody of the child" is defined as a legal guardian, a caregiver who is authorized to enroll the child in school or to authorize medical care for the child pursuant to Section 6550, or a person with whom the child resides.

(f) For purposes of this section, "employer" has the meaning provided in Section 5210.

SEC. 8. Section 3767 of the Family Code is amended to read:

3767. The employer or other person providing health insurance shall do all of the following:

(a) Notify the applicant for the assignment order or notice of assignment of the commencement date of the coverage of the child.

(b) Provide evidence of coverage and any information necessary for the child to obtain benefits through the coverage to both parents

or the person having custody of the child and to the district attorney when requested by the district attorney.

(c) Upon request by the parents or person having custody of the child, provide all forms and other documentation necessary for the purpose of submitting claims to the insurance carrier which the employer or other person providing health insurance usually provides to insureds.

SEC. 9. Section 3773 is added to the Family Code, to read:

3773. (a) This section applies only to Title IV-D cases where support enforcement services are being provided by the district attorney pursuant to Section 11475.1 of the Welfare and Institutions Code.

(b) After the court has issued a health insurance coverage assignment order pursuant to this article, the district attorney may serve on the employer a notice of health insurance coverage assignment in lieu of the health insurance coverage assignment order. The notice of health insurance coverage assignment may be combined with the notice of earnings assignment that is authorized by Section 5246.

(c) A notice of health insurance coverage assignment shall have the same force and effect as a health insurance coverage assignment order.

(d) The obligor shall have the same right to move to quash or terminate a notice of health insurance coverage assignment as provided in this article for a health insurance coverage assignment order.

(e) The notice of health insurance assignment form shall contain the same information as the forms adopted by Judicial Council pursuant to Section 3772.

SEC. 10. Section 3780 of the Family Code is repealed.

SEC. 11. Section 3781 of the Family Code is repealed.

SEC. 12. Section 3782 of the Family Code is repealed.

SEC. 13. Section 4014 of the Family Code is amended to read:

4014. (a) Any order for child support issued or modified pursuant to this chapter shall include a provision requiring the obligor and child support obligee to notify the other parent or, if the order requires payment through an agency designated under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651, et seq.), the agency named in the order, of the name and address of his or her current employer.

(b) To the extent required by federal law, and subject to applicable confidentiality provisions of state or federal law, any judgment for paternity and any order for child support entered or modified pursuant to any provision of law shall include a provision requiring the child support obligor and obligee to file with the court all of the following information:

(1) Residential and mailing address.

(2) Social security number.

(3) Telephone number.
(4) Driver's license number.
(5) Name, address, and telephone number of the employer.
(6) Any other information prescribed by the Judicial Council.

The judgment or order shall specify that each parent is responsible for providing his or her own information, that the information must be filed with the court within 10 days of the court order, and that new or different information must be filed with the court within 10 days after any event causing a change in the previously provided information.

(c) Once the child support registry, as described in Section 16576 of the Welfare and Institutions Code is operational, any judgment for paternity and any order for child support entered or modified pursuant to any provision of law shall include a provision requiring the child support obligor and obligee to file and keep updated the information specified in subdivision (b) with the child support registry.

(d) The Judicial Council shall develop forms to implement this section. These forms shall be available no later than July 1, 1998.

SEC. 14. Section 4200 of the Family Code is amended to read:

4200. In any proceeding where a court makes or has made an order requiring the payment of child support to a parent receiving welfare moneys for the maintenance of children for whom support may be ordered, the court shall do both of the following:

(a) Direct that the payments of support shall be made to the county officer designated by the court for that purpose. Once the Child Support Centralized Collection and Distribution Unit is implemented pursuant to Section 11475.4 of the Welfare and Institutions Code, all payments shall be directed to the Child Support Centralized Collection and Distribution Unit instead of the county officer designated by the court.

(b) Direct the district attorney to appear on behalf of the welfare recipient in any proceeding to enforce the order.

SEC. 15. Section 4201 of the Family Code is amended to read:

4201. In any proceeding where a court makes or has made an order requiring the payment of child support to the person having custody of a child for whom support may be ordered, the court may do either or both of the following:

(a) Direct that the payments shall be made to the county officer designated by the court for that purpose. Once the Child Support Centralized Collection and Distribution Unit is implemented pursuant to Section 11475.4 of the Welfare and Institutions Code, all payments shall be directed to the Child Support Centralized Collection and Distribution Unit instead of the county officer designated by the court.

(b) Direct the district attorney to appear on behalf of the minor children in any proceeding to enforce the order.

SEC. 16. Section 4204 is added to the Family Code, to read:

4204. Notwithstanding any other provision of law, in any proceeding where the court has made an order requiring the payment of child support to a person having custody of a child and the child support is subsequently assigned to the county pursuant to Section 11477 of the Welfare and Institutions Code or the person having custody has requested the district attorney to provide child support enforcement services pursuant to Section 11475.1 of the Welfare and Institutions Code, the district attorney may issue a notice directing that the payments shall be made to the district attorney, another county office, or the Child Support Centralized Collection Distribution Unit pursuant to Section 11475.4 of the Welfare and Institutions Code. The notice shall be served on both the support obligor and obligee in compliance with Section 1013 of the Code of Civil Procedure. The district attorney shall file the notice in the action in which the support order was issued.

SEC. 17. Section 4506.2 of the Family Code is amended to read:

4506.2. (a) Notwithstanding any other provision of law, when a support obligation is being enforced pursuant to Title IV-D of the Social Security Act, the agency enforcing the obligation may file and record a substitution of payee, if a judgment or abstract of judgment has previously been recorded pursuant to Section 697.320 of the Code of Civil Procedure by the support obligee or by a different governmental agency.

(b) Notwithstanding any other provision of law, when the Title IV-D agency ceases enforcement of a support obligation at the request of the support obligee, the agency may file and record a substitution of payee, if a judgment or abstract of judgment has been previously recorded pursuant to Section 697.320 of the Code of Civil Procedure.

(c) The substitution of payee shall contain all of the following:

(1) The name and address of the governmental agency or substituted payee filing the substitution and a notice that the substituted payee is to be contacted when notice to a lienholder may or must be given.

(2) The title of the court, the cause, and number of the proceeding where the substituted payee has registered the judgment.

(3) The name and last known address of the party ordered to pay support.

(4) The recorder identification number or book and page of the recorded document to which the substitution of payee applies.

(5) Any other information deemed reasonable and appropriate by the Judicial Council.

(d) The recorded substitution of payee shall not affect the priorities created by earlier recordations of support judgments or abstracts of support judgments.

(e) An agency enforcing the support obligation pursuant to Title IV-D of the Social Security Act is not required to obtain prior court

approval or a clerk's certification when filing and recording a substitution of payee under this section.

SEC. 18. Section 4506.3 of the Family Code is amended to read:

4506.3. The Judicial Council, in consultation with the California Family Support Council, the State Department of Social Services, and title insurance industry representatives, shall develop a single form, which conforms with the requirements of Section 27361.6 of the Government Code, for the substitution of payee, for notice directing payment of support to the district attorney pursuant to Section 4204, and for notice that support has been assigned pursuant to Section 11477 of the Welfare and Institutions Code. The form shall be available no later than July 1, 1998.

SEC. 19. Section 5100 of the Family Code is amended to read:

5100. Notwithstanding Section 291, a child or family support order may be enforced by a writ of execution or a notice of levy pursuant to Section 706.030 of the Code of Civil Procedure or Section 11350.7 of the Welfare and Institutions Code without prior court approval as long as the support order remains enforceable.

SEC. 20. Section 5101 of the Family Code is amended to read:

5101. Notwithstanding Section 291, a spousal support order may be enforced by a writ of execution or a notice of levy pursuant to Section 706.030 of the Code of Civil Procedure or Section 11350.7 of the Welfare and Institutions Code without prior court approval as long as the support order remains enforceable.

SEC. 21. Section 5201 is added to the Family Code, to read:

5201. "Arrearage" or "arrearages" is the amount necessary to satisfy a support judgment or order pursuant to Section 695.210 of the Code of Civil Procedure.

SEC. 22. Section 5206 of the Family Code is amended to read:

5206. "Earnings," to the extent that they are subject to an earnings assignment order for support under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, include:

(a) Wages, salary, bonus, money, and benefits described in Sections 704.110, 704.113, and 704.115 of the Code of Civil Procedure.

(b) Payments due for services of independent contractors, interest, dividends, rents, royalties, residuals, patent rights, or mineral or other natural resource rights.

(c) Payments or credits due or becoming due as a result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(d) Payments due for workers' compensation temporary disability benefits.

(e) Payments due as a result of disability from benefits described in Section 704.130 of the Code of Civil Procedure.

(f) Any other payments or credits due or becoming due, regardless of source.

SEC. 23. Section 5230 of the Family Code is amended to read:

5230. When the court orders a party to pay an amount for support or orders a modification of the amount of support to be paid, the court shall include in its order an earnings assignment order for support that orders the employer of the obligor to pay to the obligee that portion of the obligor's earnings due or to become due in the future as will be sufficient to pay an amount to cover both of the following:

(a) The amount ordered by the court for support.

(b) An amount which shall be ordered by the court to be paid toward the liquidation of any arrearage.

SEC. 24. Section 5230.1 is added to the Family Code, to read:

5230.1. (a) An earnings assignment or income withholding order for support issued by a court or administrative agency of another state is binding upon an employer of the obligor to the same extent as an earnings assignment order made by a court of this state.

(b) When an employer receives an earnings assignment order or an income withholding order for support from a court or administrative agency in another state, all of the provisions of this chapter shall apply.

SEC. 25. Section 5232 of the Family Code is amended to read:

5232. Service on an employer of an assignment order may be made by first-class mail in the manner prescribed in Section 1013 of the Code of Civil Procedure. The obligee shall serve the documents specified in Section 5234.

SEC. 26. Section 5234 of the Family Code is amended to read:

5234. Within 10 days of service of an assignment order on an employer, the employer shall deliver both of the following to the obligor:

(a) A copy of the assignment order.

(b) A written statement of the obligor's rights under the law to seek to quash, modify, or stay service of the earnings assignment order, together with a blank form that the obligor can file with the court to request a hearing to quash, modify, or stay service of the earnings assignment order with instructions on how to file the form and obtain a hearing date.

(c) The Judicial Council shall develop the forms specified in subdivision (b). The forms shall be available no later than July 1, 1998.

SEC. 27. Section 5235 of the Family Code is amended to read:

5235. (a) The employer shall continue to withhold and forward support as required by the assignment order until served with notice terminating the assignment order.

(b) Within 10 days of service of a substitution of payee on the employer, the employer shall forward all subsequent support to the governmental entity or other payee that sent the substitution.

(c) The employer shall send the amounts withheld to the obligee within the timeframe specified in federal law and shall report to the obligee the date on which the amount was withheld from the obligor's wages.

(d) The employer may deduct from the earnings of the employee the sum of one dollar ($1) for each payment made pursuant to the order.

(e) Once the Child Support Centralized Collection and Distribution Unit as required by Section 11475.4 of the Welfare and Institutions Code is operational, the employer shall send all earnings withheld pursuant to this chapter to the Child Support Centralized Collection and Distribution Unit instead of the obligee.

SEC. 28. Section 5237 of the Family Code is amended to read:

5237. (a) Except as provided in subdivisions (b) and (c), the obligee shall notify the employer of the obligor, by first-class mail, postage prepaid, of any change of address within a reasonable period of time after the change.

(b) Where payments have been ordered to be made to a county officer designated by the court, the obligee who is the parent, guardian, or other person entitled to receive payment through the designated county officer shall notify the designated county officer by first-class mail, postage prepaid, of any address change within a reasonable period of time after the change.

(c) If the obligee is receiving support payments from the Child Support Centralized Collection and Distribution Unit as required by Section 11475.4 of the Welfare and Institutions Code, the obligee shall notify the Child Support Centralized Collection and Distribution Unit instead of the employer of the obligor as provided in subdivision (a).

(d) If the employer, designated county officer, or the Child Support Centralized Collection and Distribution Unit is unable to deliver payments under the assignment order for a period of six months due to the failure of the obligee to notify the employer or designated county officer of a change of address, the employer or designated county officer shall not make any further payments under the assignment order and shall return all undeliverable payments to the obligor.

SEC. 29. Section 5238 of the Family Code is amended to read:

5238. (a) Where an assignment order or assignment orders include both current support and payments towards the liquidation of arrearages, priority shall be given first to the current child support obligation, then the current spousal support obligation, and thereafter to the liquidation of child and then spousal support arrearages.

(b) Where there are multiple assignment orders for the same employee, the employer shall prorate the withheld payments as follows:

(1) If the obligor has more than one assignment for support, the employer shall add together the amount of support due for each assignment.

(2) If 50 percent of the obligor's net disposable earnings will not pay in full all of the assignments for support, the employer shall

prorate it first among all of the current support assignments in the same proportion that each assignment bears to the total current support owed.

(3) The employer shall apply any remainder to the assignments for arrearage support in the same proportion that each assignment bears to the total arrearage owed.

SEC. 30. Section 5240 of the Family Code is amended to read:

5240. Upon the filing and service of a motion and a notice of motion by the obligor, the court shall terminate the service of an assignment order if past due support has been paid in full, including any interest due, and if any of the following conditions exist:

(a) With regard to orders for spousal support, the death or remarriage of the spouse to whom support is owed.

(b) With regard to orders for child support, the death or emancipation of the child for whom support is owed.

(c) The court determines that there is good cause, as defined in Section 5260, to terminate the assignment order. This subdivision does not apply if there has been more than one application for an assignment order.

(d) The obligor meets the conditions of an alternative arrangement specified in paragraph (2) of subdivision (b) of Section 5260, and a wage assignment has not been previously terminated and subsequently initiated.

(e) There is no longer a current order for support.

(f) The termination of the stay of an assignment order under Section 5261 was improper, but only if that termination was based upon the obligor's failure to make timely support payments as described in subdivision (b) of Section 5261.

(g) The employer or agency designated to provide services under Title IV-D of the Social Security Act or the Child Support Centralized Collection and Distribution Unit is unable to deliver payment for a period of six months due to the failure of the obligee to notify that employer or agency or the Child Support Centralized Collection and Distribution Unit of a change in the obligee's address.

SEC. 31. Section 5246 of the Family Code is amended to read:

5246. (a) This section applies only to Title IV-D cases where support enforcement services are being provided by the district attorney pursuant to Section 11475.1 of the Welfare and Institutions Code.

(b) In lieu of an earnings assignment order, the district attorney may serve on the employer a notice of assignment in the manner specified in Section 5232. A notice of assignment shall have the same force and effect as an earnings assignment order.

(c) The notice of assignment shall contain, at a minimum, the following information:

(1) The amount of current support ordered by the court.

(2) Any additional amount to be withheld and applied to arrearages.

(3) The date of the most recent support order.

(4) The name and address of the district attorney to whom the support is to be paid or the Child Support Centralized Collection and Distribution Unit.

(5) The amount of arrearages and the date through which the arrearages have been calculated, and a statement as to whether or not the arrearages include interest.

(6) Instructions to the employer on how to comply with the notice of assignment.

(7) A written statement of the obligor's rights under the law to seek to quash or modify the notice of assignment, together with a blank form which the obligor can file with the court to request a hearing to modify or quash the assignment with instructions on how to file the form and obtain a hearing date.

(d) If the underlying court order for support does not provide for an arrearage payment, or if an additional arrearage accrues after the date of the court order for support, the district attorney may send a notice of assignment directly to the employer which specifies the updated arrearage amount and directs the employer to withhold an additional amount not to exceed 3 percent of the arrearage or fifty dollars ($50), whichever is greater, to be applied towards liquidation of the arrearages.

(e) Within 10 days of service of the notice of assignment, the employer shall deliver both of the following to the obligor:

(1) A copy of the notice of assignment.

(2) The form to request a hearing described in paragraph (7) of subdivision (c).

(f) If the obligor requests a hearing, a hearing date shall be scheduled within 20 days of the filing of the request with the court. The clerk of the court shall provide notice of the hearing to the district attorney and the obligor no later than 10 days prior to the hearing.

(1) If at the hearing the obligor establishes that he or she is not the obligor or good cause or an alternative arrangement as provided in Section 5260, the court may order that service of the notice of assignment be quashed. If the court quashes service of the notice of assignment, the district attorney shall notify the employer within 10 days.

(2) If the obligor contends at the hearing that the payment of arrearages at the rate specified in this section is excessive or that the total arrearages owing is incorrect, and if it is determined that payment of the arrearages at the rate specified in this section creates an undue hardship upon the obligor or that the withholding would exceed the maximum amount permitted by Section 1673(b) of Title 15 of the United States Code Annotated, the rate at which the arrearages must be paid shall be reduced to a rate that is fair and reasonable considering the circumstances of the parties and the best interest of the child. If it is determined at a hearing that the total

amount of arrearages calculated is erroneous, the court shall modify the amount calculated to the correct amount. If the court modifies the total amount of arrearages owed or reduces the monthly payment due on the arrearages, the district attorney shall serve the employer with an amended notice of assignment within 10 days.

(g) If an obligor's current support obligation has terminated by operation of law, the district attorney may serve a notice of assignment on the employer which directs the employer to continue withholding from the obligor's earnings an amount not to exceed the current support order that was in effect or 3 percent of the total support arrearages including interest, whichever is greater, until such time that the employer is notified by the district attorney that the arrearages have been paid in full. The employer shall provide the obligor with the same documents as provided in subdivision (e). The obligor shall be entitled to the same rights to a hearing as specified in subdivision (f).

(h) The district attorney shall retain a copy of the notice of assignment and shall file a copy with the court whenever a hearing concerning the notice of assignment is requested.

(i) Nothing in this section prohibits the district attorney from seeking a payment on arrearages which is greater than the amount specified in this section. The district attorney may seek a higher payment on arrearages by filing an ex parte application with the court.

(j) The district attorney may transmit a notice of earnings assignment and other forms required by this section to the employer through electronic means.

SEC. 32. Section 5247 is added to the Family Code, to read:

5247. Neither the district attorney nor an employer shall be subject to any civil liability for any amount withheld and paid to the obligee, the district attorney, or the Child Support Centralized Collection and Distribution Unit pursuant to an earnings assignment order or notice of assignment.

SEC. 33. Section 5253 of the Family Code is amended to read:

5253. Upon receipt of the application, the court shall issue, without notice to the obligor, an assignment order requiring the employer of the obligor to pay to the obligee or the Child Support Centralized Collection and Distribution Unit that portion of the earnings of the obligor due or to become due in the future as will be sufficient to pay an amount to cover both of the following:

(a) The amount ordered by the court for support.

(b) An amount which shall be ordered by the court to be paid toward the liquidation of any arrearage or past due support amount.

SEC. 34. Section 5283 of the Family Code is repealed.

SEC. 35. Article 9 (commencing with Section 5600) is added to Chapter 8 of Division 9 of the Family Code, to read:

Article 9. Intercounty Support Obligations

5600. (a) A district attorney or obligee may register an order for support or earnings withholding, or both, obtained in another county of the state.

(b) An obligee may register a support order in the court of another county of this state in the manner, with the effect, and for the purposes provided in this part. The orders may be registered in any county in which the obligor, the obligee, or the child who is the subject of the order resides, or in any county in which the obligor has income, assets, or any other property.

5601. (a) When the district attorney is responsible for the enforcement of a support order pursuant to Section 11475.1 of the Welfare and Institutions Code, the district attorney may register a support order made in another county by utilizing the procedures set forth in Section 5602 or by filing all of the following in the superior court of his or her county:

(1) An endorsed file copy of the most recent support order or a copy thereof.

(2) A statement of arrearages, including an accounting of amounts ordered and paid each month, together with any added costs, fees, and interest.

(3) A statement prepared by the district attorney showing the post office address of the district attorney, the last known place of residence or post office address of the obligor; the most recent address of the obligor set forth in the licensing records of the Department of Motor Vehicles, if known; and a list of other states and counties in California that are known to the district attorney in which the original order of support and any modifications are registered.

(b) The filing of the documents described in subdivision (a) constitutes registration under this chapter.

(c) Promptly upon registration, the district attorney shall, in compliance with the requirements of Section 1013 of the Code of Civil Procedure, or in any other manner as provided by law, serve the obligor with copies of the documents described in subdivision (a).

(d) If a motion to vacate registration is filed under Section 5603, any party may introduce into evidence copies of any pleadings, documents, or orders that have been filed in the original court or other courts where the support order has been registered or modified. Certified copies of the documents shall not be required unless a party objects to the authenticity or accuracy of the document in which case it shall be the responsibility of the party who is asserting the authenticity of the document to obtain a certified copy of the questioned document.

(e) Upon registration, the clerk of the court shall forward a notice of registration to the courts in other counties and states in which the original order for support and any modifications were issued or

registered. No further proceedings regarding the obligor's support obligations shall be filed in other counties.

(f) The procedure prescribed by this section may also be used to register support or wage and earnings assignment orders of other California jurisdictions that previously have been registered for purposes of enforcement only pursuant to the Uniform Reciprocal Enforcement of Support Act (Chapter 6 (commencing with Section 4800)) in another California county. The district attorney may register such an order by filing an endorsed file copy of the registered California order plus any subsequent orders, including procedural amendments.

(g) The Judicial Council shall develop the forms necessary to effectuate this section. These forms shall be available no later than July 1, 1998.

5602. (a) An obligee other than the district attorney may register an order issued in this state using the same procedures specified in subdivision (a) of Section 5601, except that the obligee shall prepare and file the statement of registration. The statement shall be verified and signed by the obligee showing the mailing address of the obligee, the last known place of residence or mailing address of the obligor, and a list of other states and counties in California in which, to the obligee's knowledge, the original order of support and any modifications are registered.

(b) Upon receipt of the documents described in subdivision (a) of Section 5601, the clerk of the court shall file them without payment of a filing fee or other cost to the obligee. The filing constitutes registration under this chapter.

(c) Promptly upon registration, the clerk of the court shall send, by any form of mail requiring a return receipt from the addressee only, to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. Proof shall be made to the satisfaction of the court that the obligor personally received the notice of registration by mail or other method of service. A return receipt signed by the obligor shall be satisfactory evidence of personal receipt.

5603. (a) An obligor shall have 20 days after the service of notice of the registration of a California order of support in which to file a noticed motion requesting the court to vacate the registration or for other relief. In an action under this section, there shall be no joinder of actions, coordination of actions, or cross-complaints, and the claims or defenses shall be limited strictly to the identity of the obligor, the validity of the underlying California support order, or the accuracy of the obligee's statement of the amount of support remaining unpaid unless the amount has been previously established by a judgment or order. The obligor shall serve a copy of the motion, personally or by first-class mail, on the office of the district attorney, private attorney representing the obligee, or obligee representing himself or herself who filed the request for registration of the order, not less than 15

days prior to the date on which the motion is to be heard. If service is by mail, Section 1013 of the Code of Civil Procedure applies. If the obligor does not file the motion within 20 days, the registered California support order and all other documents filed pursuant to subdivision (a) of Section 5601 or Section 5602 are confirmed.

(b) At the hearing on the motion to vacate the registration of the order, the obligor may present only matters that would be available to the obligor as defenses in an action to enforce a support judgment. If the obligor shows, and the court finds, that an appeal from the order is pending or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered. If the obligor shows, and the court finds, any ground upon which enforcement of a California support order may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes security for payment of support.

5604. A previous determination of paternity made by another state, whether established through voluntary acknowledgment procedures in effect in that state or through an administrative or judicial process shall be given full faith and credit by the courts in this state, and shall have the same effect as a paternity determination made in this state and may be enforced and satisfied in a like manner.

SEC. 36. Section 7551 of the Family Code is amended to read:

7551. In a civil action or proceeding in which paternity is a relevant fact, the court may upon its own initiative or upon suggestion made by or on behalf of any person who is involved, and shall upon motion of any party to the action or proceeding made at a time so as not to delay the proceedings unduly, order the mother, child, and alleged father to submit to genetic tests. If a party refuses to submit to the tests, the court may resolve the question of paternity against that party or enforce its order if the rights of others and the interests of justice so require. A party's refusal to submit to the tests is admissible in evidence in any proceeding to determine paternity. For the purposes of this chapter, "genetic tests" means any genetic test that is generally acknowledged as reliable by accreditation bodies designated by the United States Secretary of Health and Human Services.

SEC. 37. Section 7552 of the Family Code is amended to read:

7552. The tests shall be performed by a laboratory approved by any accreditation body that has been approved by the Secretary of the United States Department of Health and Human Services. Any party or person at whose suggestion the tests have been ordered may demand that other experts, qualified as examiners of blood types, perform independent tests under order of the court, the results of which may be offered in evidence. The number and qualifications of these experts shall be determined by the court.

SEC. 38. Section 7552.5 of the Family Code is amended to read:

7552.5. (a) A copy of the results of all genetic tests performed under Section 7552 or 7558 shall be served upon all parties, by any method of service authorized under Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of the Code of Civil Procedure except personal service, no later than 20 days prior to any hearing in which the genetic test results may be admitted into evidence. The genetic test results shall be accompanied by a declaration under penalty of perjury of the custodian of records or other qualified employee of the laboratory that conducted the genetic tests, stating in substance each of the following:

(1) The declarant is the duly authorized custodian of the records or other qualified employee of the laboratory, and has authority to certify the records.

(2) A statement which establishes in detail the chain of custody of all genetic samples collected, including the date on which the genetic sample was collected, the identity of each person from whom a genetic sample was collected, the identity of the person who performed or witnessed the collecting of the genetic samples and packaged them for transmission to the laboratory, the date on which the genetic samples were received by the laboratory, the identity of the person who unpacked the samples and forwarded them to the person who performed the laboratory analysis of the genetic sample, and the identification and qualifications of all persons who performed the laboratory analysis and published the results.

(3) A statement which establishes that the procedures used by the laboratory to conduct the tests for which the test results are attached are used in the laboratory's ordinary course of business to ensure accuracy and proper identification of genetic samples.

(4) The genetic test results were prepared at or near the time of completion of the genetic tests by personnel of the business qualified to perform genetic tests in the ordinary course of business.

(b) The genetic test results shall be admitted into evidence at the hearing or trial to establish paternity, without the need for foundation testimony of authenticity and accuracy, unless a written objection to the genetic test results is filed with the court and served on all other parties, by any party no later than five days prior to the hearing or trial where paternity is at issue.

(c) If a written objection is filed by the court and served on all parties within the time specified in subdivision (b), experts appointed by the court shall be called by the court as witnesses to testify to their findings and are subject to cross-examination by the parties.

SEC. 39. Section 7555 of the Family Code is amended to read:

7555. (a) There is a rebuttable presumption, affecting the burden of proof, of paternity, if the court finds that the paternity index, as calculated by the experts qualified as examiners of genetic markers, is 100 or greater. This presumption may be rebutted by a preponderance of the evidence.

(b) As used in this section:

(1) "Genetic markers" mean separate genes or complexes of genes identified as a result of genetic tests.

(2) "Paternity index" means the commonly accepted indicator used for denoting the existence of paternity. It expresses the relative strength of the test results for and against paternity. The paternity index, computed using results of various paternity tests following accepted statistical principles, shall be in accordance with the method of expression accepted at the International Conference on Parentage Testing at Airlie House, Virginia, May 1982, sponsored by the American Association of Blood Banks.

SEC. 40. Section 7558 is added to the Family Code, to read:

7558. (a) This section applies only to cases where support enforcement services are being provided by the district attorney pursuant to Section 11475.1 of the Welfare and Institutions Code.

(b) In any civil action or proceeding in which paternity is a relevant fact, and in which the issue of paternity is contested, the district attorney may issue an administrative order requiring the mother, child, and the alleged father to submit to genetic testing if any of the following conditions exist:

(1) The person alleging paternity has signed a statement under penalty of perjury that sets forth facts that establish a reasonable possibility of the requisite sexual conduct between the mother and the alleged father.

(2) The person denying paternity has signed a statement under penalty of perjury that sets forth facts that establish a reasonable possibility of the nonexistence of the requisite sexual contact between the parties.

(3) The alleged father has filed an answer in the action or proceeding in which paternity is a relevant fact and has requested that genetic tests be performed.

(4) The mother and the alleged father agree in writing to submit to genetic tests.

(c) Notwithstanding subdivision (b), the district attorney may not order an individual to submit to genetic tests if the individual has been found to have good cause for failure to cooperate in the determination of paternity pursuant to Section 11477 of the Welfare and Institutions Code.

(d) The district attorney shall pay the costs of any genetic tests that are ordered under subdivision (b), subject to the county obtaining a court order for reimbursement from the alleged father if paternity is established under Section 7553.

(e) Nothing in this section prohibits any person who has been ordered by the district attorney to submit to genetic tests pursuant to this section from filing a notice of motion with the court in the action or proceeding in which paternity is a relevant fact seeking relief from the district attorney's order to submit to genetic tests. In that event, the court shall resolve the issue of whether genetic tests

should be ordered as provided in Section 7551. If any person refuses to submit to the tests after receipt of the administrative order pursuant to this section and fails to seek relief from the court from the administrative order either prior to the scheduled tests or within 10 days after the tests are scheduled, the court may resolve the question of paternity against that person or enforce the administrative order if the rights of others or the interest of justice so require. Except as provided in subdivision (c), a person's refusal to submit to tests ordered by the district attorney is admissible in evidence in any proceeding to determine paternity if a notice of motion is not filed within the timeframes specified in this subdivision.

(f) If the original test result creates a rebuttable presumption of paternity under Section 7555 and the result is contested, the district attorney shall order an additional test only upon request and advance payment of the contestant.

SEC. 41. Section 7571 of the Family Code is amended to read:

7571. (a) On and after January 1, 1995, upon the event of a live birth, prior to an unmarried mother leaving any hospital, the person responsible for registering live births under Section 102405 of the Health and Safety Code shall provide to the natural mother and shall attempt to provide, at the place of birth, to the man identified by the natural mother as the natural father, a voluntary declaration of paternity together with the written materials described in Section 7572. The person responsible for registering the birth shall file the declaration, if completed, with the birth certificate, and, if requested, shall transmit a copy of the declaration to the district attorney of the county where the birth occurred. A copy of the declaration shall be made available to each of the attesting parents.

(b) No health care provider shall be subject to any civil, criminal, or administrative liability for any negligent act or omission relative to the accuracy of the information provided, or for filing the declaration with the appropriate state or local agencies.

(c) The district attorney shall pay the sum of ten dollars ($10) to birthing hospitals and other entities that provide prenatal services for each completed declaration of paternity that is filed with the State Office of Vital Records, provided that the district attorney and the hospital or other entity providing prenatal services has entered into a written agreement that specifies the terms and conditions for the payment as required by federal law.

(d) If the declaration is not registered by the person responsible for registering live births at the hospital, it may be completed by the attesting parents, notarized, and mailed to the State Office of Vital Records at any time after the child's birth.

(e) Prenatal clinics may offer prospective parents the opportunity to sign a voluntary declaration of paternity. In order to be paid for their services as provided in subdivision (c), prenatal clinics must ensure that the form is witnessed and forwarded to the State Office of Vital Records.

(f) Declarations shall be made available without charge at all district attorney offices, offices of local registrars of births and deaths, courts, and county welfare departments within this state. Staff in these offices shall witness the signatures of parents wishing to sign a voluntary declaration of paternity and shall be responsible for forwarding the signed declaration to the State Office of Vital Records and Statistics.

(g) The district attorney may, at his or her option, pay the sum of ten dollars ($10) to local registrars of birth and deaths, county welfare departments, or courts for each completed declaration of paternity that is witnessed by staff in these offices and filed with the State Office of Vital Records and Statistics. In order to receive payment, the district attorney and the entity shall enter into a written agreement that specifies the terms and conditions for payment as required by federal law. The State Department of Social Services shall study the effect of the ten dollar ($10) payment on obtaining completed voluntary declaration of paternity forms and shall report to the Legislature on any recommendations to change the ten dollar ($10) optional payment, if appropriate, by January 1, 2000.

(h) The State Department of Social Services and district attorneys shall publicize the availability of the declarations. The district attorney shall make the declaration, together with the written materials described in subdivision (a) of Section 7572, available upon request to any parent. The district attorney shall also provide qualified staff to answer parents' questions regarding the declaration and the process of establishing paternity.

(i) Copies of the declaration filed with the State Office of Vital Records and Statistics shall be made available only to the parents, the child, the district attorney, the county welfare department, the county counsel, and the State Department of Social Services.

SEC. 42. Section 7572 of the Family Code is amended to read:

7572. (a) The State Department of Social Services, in consultation with the State Department of Health Services, the California Association of Hospitals and Health Systems, and other affected health provider organizations, shall work cooperatively to develop written materials to assist providers and parents in complying with this chapter.

(b) The written materials for parents which shall be attached to the form specified in Section 7574 and provided to unmarried parents shall contain the following information:

(1) A signed voluntary declaration of paternity that is filed with the State Office of Vital Records and Statistics legally establishes paternity.

(2) The legal rights and obligations of both parents and the child that result from the establishment of paternity.

(3) An alleged father's constitutional rights to have the issue of paternity decided by a court; to notice of any hearing on the issue of paternity; to have an opportunity to present his case to the court,

including his right to present and cross-examine witnesses; to have an attorney represent him; and to have an attorney appointed to represent him if he cannot afford one in a paternity action filed by the district attorney.

(4) That by signing the voluntary declaration of paternity, the father is voluntarily waiving his constitutional rights.

(c) Parents shall also be given oral notice of the rights and responsibilities specified in subdivision (b). Oral notice may be accomplished through the use of audio or videotape programs developed by the State Department of Social Services to the extent permitted by federal law.

(d) The State Department of Social Services shall, free of charge, make available to hospitals, clinics, and other places of birth any and all informational and training materials for the program under this chapter, as well as the paternity declaration form. The State Department of Social Services shall make training available to every hospital, clinic, and other place of birth no later than October 31, 1994.

(e) The State Department of Social Services may adopt regulations, including emergency regulations, necessary to implement this chapter.

SEC. 43. Section 7575 of the Family Code is amended to read:

7575. (a) Either parent may rescind the voluntary declaration of paternity by filing a rescission form with the State Office of Vital Records within 60 days of the date of execution of the declaration by the attesting father or attesting mother, whichever signature is later, unless a court order for custody, visitation, or child support has been entered in an action in which the signatory seeking to rescind was a party. The State Department of Social Services shall develop a form to be used by parents to rescind the declaration of paternity and instruction on how to complete and file the rescission with the State Office of Vital Records. The form shall include a declaration under penalty of perjury completed by the person filing the rescission form that certifies that a copy of the rescission form was sent by any form of mail requiring a return receipt to the other person who signed the voluntary declaration of paternity. A copy of the return receipt shall be attached to the rescission form when filed with the State Office of Vital Records. The form and instructions shall be written in simple, easy to understand language and shall be made available at the local family support office and the office of local registrar of births and deaths.

(b) (1) Notwithstanding Section 7573, if the court finds that the conclusions of all of the experts based upon the results of the genetic tests performed pursuant to Chapter 2 (commencing with Section 7550) are that the man who signed the voluntary declaration is not the father of the child, the court may set aside the voluntary declaration of paternity.

(2) The notice of motion for genetic tests under this section may be filed not later than two years from the date of the child's birth by either the mother or the man who signed the voluntary declaration as the child's father in an action to determine the existence or nonexistence of the father and child relationship pursuant to Section 7630 or in any action to establish an order for child custody, visitation, or child support based upon the voluntary declaration of paternity.

(3) The notice of motion for genetic tests pursuant to this section shall be supported by a declaration under oath submitted by the moving party stating the factual basis for putting the issue of paternity before the court.

(c) (1) Nothing in this chapter shall be construed to prejudice or bar the rights of either parent to file an action or motion to set aside the voluntary declaration of paternity on any of the grounds described in, and within the time limits specified in, Section 473 of the Code of Civil Procedure and Chapter 10 (commencing with Section 2120) of Part 1 of Division 6. If the action or motion to set aside the voluntary declaration of paternity is for fraud or perjury, the act must have induced the defrauded parent to sign the voluntary declaration of paternity. If the action or motion to set aside a judgment is required to be filed within a specified time period under Section 473 of the Code of Civil Procedure or Section 2122, the period within which the action or motion to set aside the voluntary declaration of paternity must be filed shall commence on the date that the court makes a finding of paternity based upon the voluntary declaration of paternity in an action for custody, visitation, or child support.

(2) The parent seeking to set aside the voluntary declaration of paternity shall have the burden of proof.

(3) Any order for custody, visitation, or child support shall remain in effect until the court determines that the voluntary declaration of paternity should be set aside, subject to the court's power to modify the orders as otherwise provided by law.

(4) Nothing in this section is intended to restrict a court from acting as a court of equity.

(5) If the voluntary declaration of paternity is set aside pursuant to paragraph (1), the court shall order that the mother, child, and alleged father submit to genetic tests pursuant to Chapter 2 (commencing with Section 7550). If the court finds that the conclusions of all the experts, as disclosed by the evidence based upon the genetic tests, are that the person who executed the voluntary declaration of paternity is not the father of the child, the question of paternity shall be resolved accordingly. If the person who executed the declaration as the father of the child is not excluded as a possible father, the question of paternity shall be resolved as otherwise provided by law. If the person who executed the declaration of paternity is ultimately determined to be the father of the child, any

child support that accrued under an order based upon the voluntary declaration of paternity shall remain due and owing.

(6) The Judicial Council shall develop the forms and procedures necessary to effectuate this subdivision.

SEC. 44. Section 7604.5 is added to the Family Code, to read:

7604.5. Notwithstanding any other provision of law, bills for pregnancy, childbirth, and genetic testing shall be admissible as evidence without third-party foundation testimony and shall constitute prima facie evidence of costs incurred for those services.

SEC. 45. Section 10005 of the Family Code is amended to read:

10005. (a) By local rule, the superior court may designate additional duties of the family law facilitator, which may include, but are not limited to, the following:

(1) Meeting with litigants to mediate issues of child support, spousal support, and maintenance of health insurance, subject to Section 10012. Actions in which one or both of the parties are unrepresented by counsel shall have priority.

(2) Drafting stipulations to include all issues agreed to by the parties, which may include issues other than those specified in Section 10003.

(3) If the parties are unable to resolve issues with the assistance of the family law facilitator, prior to or at the hearing, and at the request of the court, the family law facilitator shall review the paperwork, examine documents, prepare support schedules, and advise the judge whether or not the matter is ready to proceed.

(4) Assisting the clerk in maintaining records.

(5) Preparing formal orders consistent with the court's announced order in cases where both parties are unrepresented.

(6) Serving as a special master in proceedings and making findings to the court unless he or she has served as a mediator in that case.

(7) Providing the services specified in Division 15 (commencing with Section 10100). Except for the funding specifically designated for visitation programs pursuant to Section 669B of Title 42 of the United States Code, Title IV-D child support funds shall not be used to fund the services specified in Division 15 (commencing with Section 10100).

(b) If staff and other resources are available and the duties listed in subdivision (a) have been accomplished, the duties of the family law facilitator may also include the following:

(1) Assisting the court with research and any other responsibilities which will enable the court to be responsive to the litigants' needs.

(2) Developing programs for bar and community outreach through day and evening programs, videotapes, and other innovative means that will assist unrepresented and financially disadvantaged litigants in gaining meaningful access to family court. These programs shall specifically include information concerning underutilized legislation, such as expedited child support orders (Chapter 5 (commencing with Section 3620) of Part 1 of Division 9),

and preexisting, court-sponsored programs, such as supervised visitation and appointment of attorneys for children.

SEC. 46. Section 102425 of the Health and Safety Code is amended to read:

102425. (a) The certificate of live birth for any live birth occurring on or after January 1, 1980, shall contain those items necessary to establish the fact of the birth and shall contain only the following information:

(1) Full name and sex of child.

(2) Date of birth, including month, day, hour, and year.

(3) Planned place of birth and place of birth.

(4) Full name of father, birthplace, and date of birth of father including month, day, and year. If the mother was not married at the time the child was conceived, the father's name shall not be listed on the birth certificate unless the father and the mother sign a voluntary declaration of paternity before the birth certificate is prepared. The birth certificate may be amended to add the father's name at a later date only if paternity for the child has been established by a judgment of a court of competent jurisdiction or by the filing of a voluntary declaration of paternity.

(5) Full birth name of mother, birthplace, and date of birth of mother including month, day, and year.

(6) Multiple births and birth order of multiple births.

(7) Signature, and relationship to child, of a parent or other informant, and date signed.

(8) Name, title, and mailing address of attending physician and surgeon or principal attendant, signature, and certification of live birth by attending physician and surgeon or principal attendant or certifier, date signed, and name and title of certifier if other than attending physician and surgeon or principal attendant.

(9) Date accepted for registration and signature of local registrar.

(10) A state birth certificate number and local registration district and number.

(11) A blank space for entry of date of death with a caption reading "Date of Death."

(b) In addition to the items listed in subdivision (a), the certificate of live birth shall contain the following medical and social information, provided that the information is kept confidential pursuant to Sections 102430 and 102447 and is clearly labeled "Confidential Information for Public Health Use Only:"

(1) Birth weight.

(2) Pregnancy history.

(3) Race and ethnicity of mother and father.

(4) Residence address of mother.

(5) A blank space for entry of census tract for mother's address.

(6) Month prenatal care began and number of prenatal visits.

(7) Date of last normal menses.

(8) Description of complications of pregnancy and concurrent illnesses, congenital malformation, and any complication of labor and delivery, including surgery; provided that this information is essential medical information and appears in total on the face of the certificate.

(9) Mother's and father's occupations and kind of business or industry.

(10) Education level of mother and father.

(11) Principal source of pay for prenatal care, which shall include all of the following: Medi-Cal, health maintenance organization or prepaid health plan, private insurance companies, medically indigent, self-pay, other sources which shall include, Medicare, workers' compensation, Title V, other government or nongovernment programs, no charge, and other categories as determined by the State Department of Health Services.

This paragraph shall become inoperative on January 1, 1999, or on the implementation date of the decennial birth certificate revision due to occur on or about January 1, 1999, whichever occurs first.

(12) Expected principal source of pay for delivery, which shall include all of the following: Medi-Cal, health maintenance organization or prepaid health plan, private insurance companies, medically indigent, self-pay, other sources which shall include, Medicare, workers' compensation, Title V, other government or nongovernment programs, no charge, and other categories as determined by the State Department of Health Services.

This paragraph shall become inoperative on January 1, 1999, or on the implementation date of the decennial birth certificate revision due to occur on or about January 1, 1999, whichever occurs first.

(13) An indication of whether or not the child's parent desires the automatic issuance of a social security number to the child.

(14) On and after January 1, 1995, the social security numbers of the mother and father, unless subdivision (b) of Section 102150 applies.

(c) Item 8, specified in subdivision (b), shall be completed by the attending physician and surgeon or the attending physician's and surgeon's designated representative. The names and addresses of children born with congenital malformations, who require followup treatment, as determined by the child's physician and surgeon, shall be furnished by the physician and surgeon to the local health officer, if permission is granted by either parent of the child.

(d) The parent shall only be asked to sign the form after both the public portion and the confidential medical and social information items have been entered upon the certificate of live birth.

(e) The State Registrar shall instruct all local registrars to collect the information specified in this section with respect to certificates of live birth. The information shall be transcribed on the certificate of live birth in use at the time and shall be limited to the information specified in this section.

Information relating to concurrent illnesses, complications of pregnancy and delivery, and congenital malformations shall be completed by the physician and surgeon, or physician's and surgeon's designee, inserting in the space provided on the confidential portion of the certificate the appropriate number or numbers listed on the VS-10A supplemental worksheet. The VS-10A supplemental form shall be used as a worksheet only and shall not in any manner be linked with the identity of the child or the mother, nor submitted with the certificate to the State Registrar. All information transferred from the worksheet to the certificate shall be fully explained to the parent or other informant prior to the signing of the certificate. No questions relating to drug or alcohol abuse may be asked.

(f) If the implementation date of the decennial birth certificate revision occurs prior to January 1, 1999, within 30 days of this implementation date the State Department of Health Services shall file a letter with the Secretary of the Senate and with the Chief Clerk of the Assembly, so certifying.

SEC. 47. Section 19271.5 is added to the Revenue and Taxation Code, to read:

19271.5. (a) A county district attorney enforcing child support obligations pursuant to Section 11475.1 of the Welfare and Institutions Code may refer child support obligations to the Franchise Tax Board to collect child support payments that are not child support delinquencies, as defined in this article, or past due amounts. If a child support obligation becomes a child support delinquency during the time the Franchise Tax Board is administering wage withholding, then the Franchise Tax Board shall commence collection of the delinquency pursuant to Section 19271.

(1) Referrals shall be transmitted in the form and manner prescribed by the Franchise Tax Board.

(2) In order to manage the growth in the number of referrals that it will receive, the Franchise Tax Board may phase in the referrals as administratively necessary.

(b) When a child support obligation is referred to the Franchise Tax Board pursuant to subdivision (a), or at any time thereafter, if the obligated parent owes a delinquent personal income tax liability, the Franchise Tax Board shall not engage in, or shall cease, collection of the child support obligation referred under subdivision (a) until the delinquent personal income tax liability is paid in full. However, the Franchise Tax Board may engage in collection of an obligation referred under subdivision (a) under either of the following circumstances:

(1) The delinquent personal income tax liability is discharged from accountability pursuant to Section 13940 of the Government Code.

(2) The obligor has entered into an installment payment agreement for the delinquent personal income tax liability and is in compliance with that agreement and the Franchise Tax Board

determines that collection of the child support obligation referred under subdivision (a) would not jeopardize the payments under the terms of the agreement.

(c) For purposes of administering subdivision (b):

(1) "Collection of child support obligation" means administering wage withholding pursuant to Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code or Section 3088 of the Probate Code, that requires an employer to withhold earnings for support.

(2) "Delinquent personal income tax liability" means any taxes, additions to tax, penalties, interest, fees, or other related amounts due and payable under Part 10 (commencing with Section 17001) or this part.

(d) Any services or information available to a district attorney or the Title IV-D agency in collecting child support obligations or locating absent or noncustodial parents shall be available to the Franchise Tax Board for purposes of collecting child support obligations under this section, including, but not limited to, any information that may be disclosed by the Franchise Tax Board to the California Parent Locator Service under Section 19548.

SEC. 48. Section 1088.7 is added to the Unemployment Insurance Code, to read:

The Employment Development Department, in consultation with the Department of Social Services and the Franchise Tax Board, shall prepare and submit a study to the Governor and the Legislature that identifies possible methods for establishing a state mechanism for the reporting of the income of service-providers for the purpose of collecting delinquent child support obligations. The study shall include recommendations as to the most feasible and cost-effective reporting methods. The study shall be submitted no later than June 30, 1998.

SEC. 49. Section 11350.1 of the Welfare and Institutions Code is amended to read:

11350.1. (a) Notwithstanding any other statute, in any action brought by the district attorney for the support of a minor child or children, the action may be prosecuted in the name of the county on behalf of the child, children, or a parent of the child or children. The parent who has requested or is receiving support enforcement services of the district attorney shall not be a necessary party to the action but may be subpoenaed as a witness. Except as provided in subdivision (e), in an action under this section there shall be no joinder of actions, or coordination of actions, or cross-complaints, and the issues shall be limited strictly to the question of parentage, if applicable, and child support, including an order for medical support. A final determination of parentage may be made in any action under this section as an incident to obtaining an order for support. An action for support or parentage pursuant to this section shall not be delayed

or stayed because of the pendency of any other action between the parties.

(b) Judgment in an action brought pursuant to this section, and in an action brought pursuant to Section 11350, if at issue, may be rendered pursuant to a noticed motion, which shall inform the defendant that in order to exercise his or her right to trial, he or she must appear at the hearing on the motion.

If the defendant appears at the hearing on the motion, the court shall inquire of him or her if he or she desires to subpoena evidence and witnesses, if parentage is at issue and genetic tests have not already been conducted whether he or she desires genetic tests, and if he or she desires a trial. If his or her answer is in the affirmative, a continuance shall be granted to allow him or her to exercise those rights. A continuance shall not postpone the hearing to more than 90 days from the date of service of the motion. In the event that a continuance is granted, the court may make an order for temporary support without prejudice to the right of the court to make an order for temporary support as otherwise allowed by law.

(c) In any action to enforce a spousal support order the action may be pled in the name of the county in the same manner as an action to establish a child support obligation. The same restrictions on joinder of actions, coordination of actions, and cross-complaints, and delay because of the pendency of any other action as relates to actions to establish a child support obligation shall also apply to actions to enforce a spousal support order.

(d) Nothing contained in this section shall be construed to prevent the parties from bringing an independent action under the Family Code and litigating the issues of support, custody, visitation, or protective orders. In that event, any support, custody, visitation, or protective order issued by the court in an action pursuant to this section shall be filed in the action commenced under the Family Code and shall continue in effect until modified by a subsequent order of the court. To the extent that the orders conflict, the court order last issued shall supersede all other orders and be binding upon all parties in that action.

(e) (1) After a support order, including a temporary support order and an order for medical support only, has been entered in an action brought pursuant to this section, the parent who has requested or is receiving support enforcement services of the district attorney shall become a party to the action brought pursuant to this section, only in the manner and to the extent provided by this section, and only for the purposes allowed by this section.

(2) Notice of the parent's status as a party shall be given to the parent by the district attorney in conjunction with the notice required by subdivision (e) of Section 11478.2. The complaint shall contain this notice. Service of the complaint on the parent in compliance with Section 1013 of the Code of Civil Procedure, or as otherwise provided by law, shall constitute compliance with this

section. In all actions commenced under the procedures and forms in effect on or before December 31, 1996, the parent who has requested or is receiving support enforcement services of the district attorney shall not become a party to the action until he or she is joined as a party pursuant to an ex parte application or noticed motion for joinder filed by the district attorney or a noticed motion filed by either parent. The district attorney shall serve a copy of any order for joinder of a parent obtained by the district attorney's application on both parents in compliance with Section 1013 of the Code of Civil Procedure.

(3) The parent who has requested or is receiving support enforcement services of the district attorney is a party to an action brought under this section for issues relating to the support, custody, and visitation of a child, and for restraining orders, and for no other purpose. The district attorney shall not be required to serve or receive service of papers, pleadings, or documents, or participate in, or attend any hearing or proceeding relating to issues of custody or visitation, except as otherwise required by law. Orders concerning custody and visitation may be made in an action pursuant to this subdivision only if orders concerning custody and visitation have not been previously made by a court of competent jurisdiction in this state or another state and the court has jurisdiction and is the proper venue for custody and visitation determinations. All issues regarding custody and visitation shall be heard and resolved in the manner provided by the Family Code. Except as otherwise provided by law, the district attorney shall control support and parentage litigation brought pursuant to this section, and the manner, method, and procedures used in establishing parentage and in establishing and enforcing support obligations unless and until the parent who requested or is receiving support enforcement services has requested in writing that the district attorney close his or her case and the case has been closed in accordance with federal regulation.

(f) (1) A parent who has requested or is receiving support enforcement services of the district attorney may take independent action to modify a support order made pursuant to this section while support enforcement services are being provided by the district attorney. The parent shall serve the district attorney with notice of any action filed to modify the support order and provide the district attorney with a copy of the modified order within 15 calendar days after the date the order is issued.

(2) A parent who has requested or is receiving support enforcement services of the district attorney may take independent action to enforce a support order made pursuant to this section while support enforcement services are being provided by the district attorney with the written consent of the district attorney. At least 30 days prior to filing an independent enforcement action, the parent shall provide the district attorney with written notice of the parent's intent to file an enforcement action which includes a description of

the type of enforcement action the parent intends to file. Within 30 days of receiving the notice, the district attorney shall either provide written consent for the parent to proceed with the independent enforcement action or notify the parent that he or she objects to the parent filing the proposed independent enforcement action. The district attorney may object only if the district attorney is currently using an administrative or judicial method to enforce the support obligation or if the proposed independent enforcement action would interfere with an investigation being conducted by the district attorney. If the district attorney does not respond to the parent's written notice within 30 days, the district attorney shall be deemed to have given consent.

(3) The court shall order that all payments of support shall be made to the district attorney in any action filed under this section by the parent who has requested, or is receiving, support enforcement services of the district attorney unless support enforcement services have been terminated by the district attorney by case closure as provided by federal law. Any order obtained by a parent prior to support enforcement services being terminated in which the district attorney did not receive proper notice pursuant to this section shall be voidable upon the motion of the district attorney.

(g) For the purpose of this section, "a parent who is receiving support enforcement services" includes a parent who has assigned his or her rights to support pursuant to Section 11477.

(h) The Judicial Council shall develop forms to implement this section. These forms shall be available no later than July 1, 1998.

SEC. 50. Section 11350.6 of the Welfare and Institutions Code is amended to read:

11350.6. (a) As used in this section:

(1) "Applicant" means any person applying for issuance or renewal of a license.

(2) "Board" means any entity specified in Section 101 of the Business and Professions Code, the entities referred to in Sections 1000 and 3600 of the Business and Professions Code, the State Bar, the Department of Real Estate, the Department of Motor Vehicles, the Secretary of State, the Department of Fish and Game, and any other state commission, department, committee, examiner, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession, or to the extent required by federal law or regulations, for recreational purposes. This term includes all boards, commissions, departments, committees, examiners, entities, and agencies that issue a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession. The failure to specifically name a particular board, commission, department, committee, examiner, entity, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession does

not exclude that board, commission, department, committee, examiner, entity, or agency from this term.

(3) "Certified list" means a list provided by the district attorney to the State Department of Social Services in which the district attorney verifies, under penalty of perjury, that the names contained therein are support obligors found to be out of compliance with a judgment or order for support in a case being enforced under Title IV-D of the Social Security Act.

(4) "Compliance with a judgment or order for support" means that, as set forth in a judgment or order for child or family support, the obligor is no more than 30 calendar days in arrears in making payments in full for current support, in making periodic payments in full, whether court ordered or by agreement with the district attorney, on a support arrearage, or in making periodic payments in full, whether court ordered or by agreement with the district attorney, on a judgment for reimbursement for public assistance, or has obtained a judicial finding that equitable estoppel as provided in statute or case law precludes enforcement of the order. The district attorney is authorized to use this section to enforce orders for spousal support only when the district attorney is also enforcing a related child support obligation owed to the obligee parent by the same obligor, pursuant to Sections 11475.1 and 11475.2.

(5) "License" includes membership in the State Bar, and a certificate, credential, permit, registration, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession, or to operate a commercial motor vehicle, including appointment and commission by the Secretary of State as a notary public. "License" also includes any driver's license issued by the Department of Motor Vehicles, any commercial fishing license issued by the Department of Fish and Game, and to the extent required by federal law or regulations, any license used for recreational purposes. This term includes all licenses, certificates, credentials, permits, registrations, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession. The failure to specifically name a particular type of license, certificate, credential, permit, registration, or other authorization issued by a board that allows a person to engage in a business, occupation, or profession, does not exclude that license, certificate, credential, permit, registration, or other authorization from this term.

(6) "Licensee" means any person holding a license, certificate, credential, permit, registration, or other authorization issued by a board, to engage in a business, occupation, or profession, or a commercial driver's license as defined in Section 15210 of the Vehicle Code, including an appointment and commission by the Secretary of State as a notary public. "Licensee" also means any person holding a driver's license issued by the Department of Motor Vehicles, any person holding a commercial fishing license issued by the

Department of Fish and Game, and to the extent required by federal law or regulations, any person holding a license used for recreational purposes. This term includes all persons holding a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession, and the failure to specifically name a particular type of license, certificate, credential, permit, registration, or other authorization issued by a board does not exclude that person from this term.

(b) The district attorney shall maintain a list of those persons included in a case being enforced under Title IV-D of the Social Security Act against whom a support order or judgment has been rendered by, or registered in, a court of this state, and who are not in compliance with that order or judgment. The district attorney shall submit a certified list with the names, social security numbers, and last known addresses of these persons and the name, address, and telephone number of the district attorney who certified the list to the State Department of Social Services. The district attorney shall verify, under penalty of perjury, that the persons listed are subject to an order or judgment for the payment of support and that these persons are not in compliance with the order or judgment. The district attorney shall submit to the State Department of Social Services an updated certified list on a monthly basis.

(c) The State Department of Social Services shall consolidate the certified lists received from the district attorneys and, within 30 calendar days of receipt, shall provide a copy of the consolidated list to each board which is responsible for the regulation of licenses, as specified in this section.

(d) On or before November 1, 1992, or as soon thereafter as economically feasible, as determined by the State Department of Social Services, all boards subject to this section shall implement procedures to accept and process the list provided by the State Department of Social Services, in accordance with this section. Notwithstanding any other provision of law, all boards shall collect social security numbers from all applicants for the purposes of matching the names of the certified list provided by the State Department of Social Services to applicants and licensees and of responding to requests for this information made by child support agencies.

(e) (1) Promptly after receiving the certified consolidated list from the State Department of Social Services, and prior to the issuance or renewal of a license, each board shall determine whether the applicant is on the most recent certified consolidated list provided by the State Department of Social Services. The board shall have the authority to withhold issuance or renewal of the license of any applicant on the list.

(2) If an applicant is on the list, the board shall immediately serve notice as specified in subdivision (f) on the applicant of the board's intent to withhold issuance or renewal of the license. The notice shall

be made personally or by mail to the applicant's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.

(A) The board shall issue a temporary license valid for a period of 150 days to any applicant whose name is on the certified list if the applicant is otherwise eligible for a license.

(B) Except as provided in subparagraph (D), the 150-day time period for a temporary license shall not be extended. Except as provided in subparagraph (D), only one temporary license shall be issued during a regular license term and it shall coincide with the first 150 days of that license term. As this paragraph applies to commercial driver's licenses, "license term" shall be deemed to be 12 months from the date the application fee is received by the Department of Motor Vehicles. A license for the full or remainder of the license term shall be issued or renewed only upon compliance with this section.

(C) In the event that a license or application for a license or the renewal of a license is denied pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board.

(D) This paragraph shall apply only in the case of a driver's license, other than a commercial driver's license. Upon the request of the district attorney or by order of the court upon a showing of good cause, the board shall extend a 150-day temporary license for a period not to exceed 150 extra days.

(3) (A) The State Department of Social Services may, when it is economically feasible for the department and the boards to do so as determined by the department, in cases where the department is aware that certain child support obligors listed on the certified lists have been out of compliance with a judgment or order for support for more than four months, provide a supplemental list of these obligors to each board with which the department has an interagency agreement to implement this paragraph. Upon request by the department, the licenses of these obligors shall be subject to suspension, provided that the licenses would not otherwise be eligible for renewal within six months from the date of the request by the department. The board shall have the authority to suspend the license of any licensee on this supplemental list.

(B) If a licensee is on a supplemental list, the board shall immediately serve notice as specified in subdivision (f) on the licensee that his or her license will be automatically suspended 150 days after notice is served, unless compliance with this section is achieved. The notice shall be made personally or by mail to the licensee's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.

(C) The 150-day notice period shall not be extended.

(D) In the event that any license is suspended pursuant to this section, any funds paid by the licensee shall not be refunded by the board.

(E) This paragraph shall not apply to licenses subject to annual renewal or annual fee.

(f) Notices shall be developed by each board in accordance with guidelines provided by the State Department of Social Services and subject to approval by the State Department of Social Services. The notice shall include the address and telephone number of the district attorney who submitted the name on the certified list, and shall emphasize the necessity of obtaining a release from that district attorney's office as a condition for the issuance, renewal, or continued valid status of a license or licenses.

(1) In the case of applicants not subject to paragraph (3) of subdivision (e), the notice shall inform the applicant that the board shall issue a temporary license, as provided in subparagraph (A) of paragraph (2) of subdivision (e), for 150 calendar days if the applicant is otherwise eligible and that upon expiration of that time period the license will be denied unless the board has received a release from the district attorney who submitted the name on the certified list.

(2) In the case of licensees named on a supplemental list, the notice shall inform the licensee that his or her license will continue in its existing status for no more than 150 calendar days from the date of mailing or service of the notice and thereafter will be suspended indefinitely unless, during the 150-day notice period, the board has received a release from the district attorney who submitted the name on the certified list. Additionally, the notice shall inform the licensee that any license suspended under this section will remain so until the expiration of the remaining license term, unless the board receives a release along with applications and fees, if applicable, to reinstate the license during the license term.

(3) The notice shall also inform the applicant or licensee that if an application is denied or a license is suspended pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board. The State Department of Social Services shall also develop a form that the applicant shall use to request a review by the district attorney. A copy of this form shall be included with every notice sent pursuant to this subdivision.

(g) (1) Each district attorney shall maintain review procedures consistent with this section to allow an applicant to have the underlying arrearage and any relevant defenses investigated, to provide an applicant information on the process of obtaining a modification of a support order, or to provide an applicant assistance in the establishment of a payment schedule on arrearages if the circumstances so warrant.

(2) It is the intent of the Legislature that a court or district attorney, when determining an appropriate payment schedule for arrearages, base its decision on the facts of the particular case and the priority of payment of child support over other debts. The payment schedule shall also recognize that certain expenses may be essential

to enable an obligor to be employed. Therefore, in reaching its decision, the court or the district attorney shall consider both of these goals in setting a payment schedule for arrearages.

(h) If the applicant wishes to challenge the submission of his or her name on the certified list, the applicant shall make a timely written request for review on the form specified in subdivision (f) to the district attorney who certified the applicant's name. The district attorney shall, within 75 days of receipt of the written request, inform the applicant in writing of his or her findings upon completion of the review. The district attorney shall immediately send a release to the appropriate board and the applicant, if any of the following conditions are met:

(1) The applicant is found to be in compliance or negotiates an agreement with the district attorney for a payment schedule on arrearages or reimbursement.

(2) The applicant has submitted a request for review, but the district attorney will be unable to complete the review and send notice of his or her findings to the applicant within 75 days. This paragraph applies only if the delay in completing the review process is not the result of the applicant's failure to act in a reasonable, timely, and diligent manner upon receiving notice from the board that his or her name is on the list.

(3) The applicant has filed and served a request for judicial review pursuant to this section, but a resolution of that review will not be made within 150 days of the date of service of notice pursuant to subdivision (f). This paragraph applies only if the delay in completing the judicial review process is not the result of the applicant's failure to act in a reasonable, timely, and diligent manner upon receiving the district attorney's notice of his or her findings.

(4) The applicant has obtained a judicial finding of compliance as defined in this section.

(i) An applicant is required to act with diligence in responding to notices from the board and the district attorney with the recognition that the temporary license will lapse or the license suspension will go into effect after 150 days and that the district attorney and, where appropriate, the court must have time to act within that period. An applicant's delay in acting, without good cause, which directly results in the inability of the district attorney to complete a review of the applicant's request or the court to hear the request for judicial review within the 150-day period shall not constitute the diligence required under this section which would justify the issuance of a release.

(j) Except as otherwise provided in this section, the district attorney shall not issue a release if the applicant is not in compliance with the judgment or order for support. The district attorney shall notify the applicant in writing that the applicant may, by filing an order to show cause or notice of motion, request any or all of the following:

(1) Judicial review of the district attorney's decision not to issue a release.

(2) A judicial determination of compliance.

(3) A modification of the support judgment or order.

The notice shall also contain the name and address of the court in which the applicant shall file the order to show cause or notice of motion and inform the applicant that his or her name shall remain on the certified list if the applicant does not timely request judicial review. The applicant shall comply with all statutes and rules of court regarding orders to show cause and notices of motion.

Nothing in this section shall be deemed to limit an applicant from filing an order to show cause or notice of motion to modify a support judgment or order or to fix a payment schedule on arrearages accruing under a support judgment or order or to obtain a court finding of compliance with a judgment or order for support.

(k) The request for judicial review of the district attorney's decision shall state the grounds for which review is requested and judicial review shall be limited to those stated grounds. The court shall hold an evidentiary hearing within 20 calendar days of the filing of the request for review. Judicial review of the district attorney's decision shall be limited to a determination of each of the following issues:

(1) Whether there is a support judgment, order, or payment schedule on arrearages or reimbursement.

(2) Whether the petitioner is the obligor covered by the support judgment or order.

(3) Whether the support obligor is or is not in compliance with the judgment or order of support.

(4) The extent to which the needs of the obligor, taking into account the obligor's payment history and the current circumstances of both the obligor and the obligee, warrant a conditional release as described in this subdivision.

The request for judicial review shall be served by the applicant upon the district attorney who submitted the applicant's name on the certified list within seven calendar days of the filing of the petition. The court has the authority to uphold the action, unconditionally release the license, or conditionally release the license.

If the judicial review results in a finding by the court that the obligor is in compliance with the judgment or order for support, the district attorney shall immediately send a release in accordance with subdivision (h) to the appropriate board and the applicant. If the judicial review results in a finding by the court that the needs of the obligor warrant a conditional release, the court shall make findings of fact stating the basis for the release and the payment necessary to satisfy the unrestricted issuance or renewal of the license without prejudice to a later judicial determination of the amount of support arrearages, including interest, and shall specify payment terms,

compliance with which are necessary to allow the release to remain in effect.

(*l*) The State Department of Social Services shall prescribe release forms for use by district attorneys. When the obligor is in compliance, the district attorney shall mail to the applicant and the appropriate board a release stating that the applicant is in compliance. The receipt of a release shall serve to notify the applicant and the board that, for the purposes of this section, the applicant is in compliance with the judgment or order for support.

If the district attorney determines subsequent to the issuance of a release that the applicant is once again not in compliance with a judgment or order for support, or with the terms of repayment as described in this subdivision, the district attorney may notify the board, the obligor, and the State Department of Social Services in a format prescribed by the State Department of Social Services that the obligor is not in compliance.

The State Department of Social Services may, when it is economically feasible for the department and the boards to develop an automated process for complying with this subdivision, notify the boards in a manner prescribed by the department, that the obligor is once again not in compliance. Upon receipt of this notice, the board shall immediately notify the obligor on a form prescribed by the department that the obligor's license will be suspended on a specific date, and this date shall be no longer than 30 days from the date the form is mailed. The obligor shall be further notified that the license will remain suspended until a new release is issued in accordance with subdivision (h). Nothing in this section shall be deemed to limit the obligor from seeking judicial review of suspension pursuant to the procedures described in subdivision (k).

(m) The State Department of Social Services may enter into interagency agreements with the state agencies that have responsibility for the administration of boards necessary to implement this section, to the extent that it is cost-effective to implement this section. These agreements shall provide for the receipt by the other state agencies and boards of federal funds to cover that portion of costs allowable in federal law and regulation and incurred by the state agencies and boards in implementing this section. Notwithstanding any other provision of law, revenue generated by a board or state agency shall be used to fund the nonfederal share of costs incurred pursuant to this section. These agreements shall provide that boards shall reimburse the State Department of Social Services for the nonfederal share of costs incurred by the department in implementing this section. The boards shall reimburse the State Department of Social Services for the nonfederal share of costs incurred pursuant to this section from moneys collected from applicants and licensees.

(n) Notwithstanding any other provision of law, in order for the boards subject to this section to be reimbursed for the costs incurred

in administering its provisions, the boards may, with the approval of the appropriate department director, levy on all licensees and applicants a surcharge on any fee or fees collected pursuant to law, or, alternatively, with the approval of the appropriate department director, levy on the applicants or licensees named on a certified list or supplemental list, a special fee.

(o) The process described in subdivision (h) shall constitute the sole administrative remedy for contesting the issuance of a temporary license or the denial or suspension of a license under this section. The procedures specified in the administrative adjudication provisions of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) shall not apply to the denial, suspension, or failure to issue or renew a license or the issuance of a temporary license pursuant to this section.

(p) In furtherance of the public policy of increasing child support enforcement and collections, on or before November 1, 1995, the State Department of Social Services shall make a report to the Legislature and the Governor based on data collected by the boards and the district attorneys in a format prescribed by the State Department of Social Services. The report shall contain all of the following:

(1) The number of delinquent obligors certified by district attorneys under this section.

(2) The number of support obligors who also were applicants or licensees subject to this section.

(3) The number of new licenses and renewals that were delayed, temporary licenses issued, and licenses suspended subject to this section and the number of new licenses and renewals granted and licenses reinstated following board receipt of releases as provided by subdivision (h) by May 1, 1995.

(4) The costs incurred in the implementation and enforcement of this section.

(q) Any board receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or suspended under this section or has been granted a temporary license under this section shall respond only that the license was denied or suspended or the temporary license was issued pursuant to this section. Information collected pursuant to this section by any state agency, board, or department shall be subject to the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code).

(r) Any rules and regulations issued pursuant to this section by any state agency, board, or department may be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government

Code). The adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare. The regulations shall become effective immediately upon filing with the Secretary of State.

(s) The State Department of Social Services and boards, as appropriate, shall adopt regulations necessary to implement this section.

(t) The Judicial Council shall develop the forms necessary to implement this section, except as provided in subdivisions (f) and (*l*).

(u) The release or other use of information received by a board pursuant to this section, except as authorized by this section, is punishable as a misdemeanor.

(v) The State Board of Equalization shall enter into interagency agreements with the State Department of Social Services and the Franchise Tax Board that will require the State Department of Social Services and the Franchise Tax Board to maximize the use of information collected by the State Board of Equalization, for child support enforcement purposes, to the extent it is cost-effective and permitted by the Revenue and Taxation Code.

(w) The suspension or revocation of any driver's license, including a commercial driver's license, under this section shall not subject the licensee to vehicle impoundment pursuant to Section 14602.6 of the Vehicle Code.

(x) If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(y) All rights to administrative and judicial review afforded by this section to an applicant shall also be afforded to a licensee.

SEC. 51. Section 11350.7 of the Welfare and Institutions Code is amended to read:

11350.7. (a) Notwithstanding any other provision of law, if any support obligor is delinquent in the payment of support for at least 30 days and the district attorney is enforcing the support obligation pursuant to Section 11475.1, the district attorney may collect the delinquency or enforce any lien by levy served on all persons having in their possession, or who will have in their possession or under their control, any credits or personal property belonging to the delinquent support obligor, or who owe any debt to the obligor at the time they receive the notice of levy.

(b) A levy may be issued by a district attorney for a support obligation which accrued under a court order or judgment if the obligor had notice of the accrued support arrearage as provided in this section, and did not make a timely request for review.

(c) The notice requirement shall be satisfied by the district attorney sending a statement of support arrearages to the obligor at the obligor's last known address by first-class mail, postage prepaid. The notice shall advise the obligor of the amount of the support arrearage. The notice shall advise the obligor that the obligor may have the arrearage determination reviewed by administrative procedures and state how such a review may be obtained. The notice shall also advise the obligor of his or her right to seek a judicial determination of arrearages pursuant to Section 11350.8 and shall include a form to be filed with the court to request a judicial determination of arrearages. If the obligor requests an administrative review of the arrearage determination within 20 days from the date the notice was mailed to the obligor, the district attorney shall review the assessment or determination and shall not issue the levy for a disputed amount of support until the administrative review procedure is completed.

(d) If the obligor requests a judicial determination of the arrearages within 20 days from the date the notice was mailed to the obligor, the district attorney shall not issue the levy for a disputed amount of support until the judicial determination is complete.

(e) Any person upon whom a levy has been served having in his or her possession or under his or her control any credits or personal property belonging to the delinquent support obligor or owing any debts to the delinquent support obligor at the time of receipt of the levy or coming into his or her possession or under his or her control within one year of receipt of the notice of levy, shall surrender the credits or personal property to the district attorney or pay to the district attorney the amount of any debt owing the delinquent support obligor within 10 days of service of the levy, and shall surrender the credits or personal property, or the amount of any debt owing to the delinquent support obligor coming into his or her own possession or control within one year of receipt of the notice of levy within 10 days of the date of coming into possession or control of the credits or personal property or the amount of any debt owing to the delinquent support obligor.

(f) Any person who surrenders any credits or personal property or pays the debts owing the delinquent support obligor to the district attorney pursuant to this section shall be discharged from any obligation or liability to the delinquent support obligor to the extent of the amount paid to the district attorney as a result of the levy.

(g) If the levy is made on a deposit or credits or personal property in the possession or under the control of a bank, savings and loan association, or other financial institution as defined by Section 669A(d)(1) of Title 42 of the United States Code, the notice of levy may be delivered or mailed to a centralized location designated by the bank, savings and loan association, or other financial institution pursuant to Section 689.040 of the Code of Civil Procedure.

(h) Any person who is served with a levy pursuant to this section and who fails or refuses to surrender any credits or other personal property or pay any debts owing to the delinquent support obligor shall be liable in his or her own person or estate to the district attorney in an amount equal to the value of the credits or other personal property or in the amount of the levy, up to the amount specified in the levy.

(i) If any amount required to be paid pursuant to a levy under this section is not paid when due, the district attorney may issue a warrant for enforcement of any lien and for the collection of any amount required to be paid to the district attorney under this section. The warrant shall be directed to any sheriff, constable, marshal, or the Department of the California Highway Patrol and shall have the same force and effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the manner and with the same force and effect as a levy and sale pursuant to a writ of execution. The district attorney may pay or advance to the levying officer the same fees, commissions, and expenses for his or her services under this section as are provided by law for similar services pursuant to a writ of execution, except for those fees and expenses for which the district attorney is exempt by law from paying. The district attorney, and not the court, shall approve the fees for publication in a newspaper.

(j) The fees, commissions, expenses, and the reasonable costs associated with the sale of property levied upon by warrant or levy pursuant to this section, including, but not limited to, appraisers' fees, auctioneers' fees, and advertising fees are an obligation of the support obligor and may be collected from the obligor by virtue of the warrant or levy or in any other manner as though these items were support payments delinquent for at least 30 days.

SEC. 52. Section 11352 of the Welfare and Institutions Code is amended to read:

11352. In any action or judgment brought or obtained pursuant to Section 11350, 11350.1, 11475.1, or 11476.1, a supplemental complaint may be filed, pursuant to Section 464 of the Code of Civil Procedure and Section 2330.1 of the Family Code, either before or after a final judgment, seeking a judgment or order of paternity or support for a child of the mother and father of the child whose paternity and support are already in issue before the court. A supplemental judgment entered in such proceedings shall include, when appropriate and requested in the supplemental complaint, an order establishing or modifying support for all children named in the original or supplemental actions in conformity with the statewide uniform guideline for child support. A supplemental complaint for paternity or support of children may be filed without leave of court either before or after final judgment in the underlying action. Service of the supplemental summons and complaint shall be made in the manner provided for the initial service of a summons by the Code of Civil Procedure.

SEC. 53. Section 11356 of the Welfare and Institutions Code, as amended by Section 3 of Chapter 14 of the Statutes of 1997, is amended to read:

11356. (a) In any action filed by the district attorney pursuant to Section 11350, 11350.1, or 11475.1, the court may, on any terms that may be just, relieve the defendant from that part of the judgment or order concerning the amount of child support to be paid. This relief may be granted after the six-month time limit of Section 473 of the Code of Civil Procedure has elapsed, based on the grounds, and within the time limits, specified in this section.

(b) This section shall apply only to judgments or orders for support that were based upon presumed income as specified in subdivision (c) of Section 11475.1 and that were entered after the entry of the default of the defendant under Section 11355. This section shall apply only to the amount of support ordered and not that portion of the judgment or order concerning the determination of parentage.

(c) The court may set aside the child support order contained in a judgment described in subdivision (b) if the defendant's income was substantially different for the period of time during which the judgment was effective compared with the income defendant was presumed to have. A "substantial difference" means that amount of income that would result in an order for support that deviates from the order entered by default by 20 percent or more. If the difference between the defendant's actual income and the presumed income would result in an order for support that deviates from the order entered by default by less than 20 percent, the court may set aside the child support order only if the court states in writing or on the record that the defendant is experiencing an extreme financial hardship due to the circumstances enumerated in Section 4071 of the Family Code and that a set aside of the default judgment is necessary to accommodate those circumstances.

(d) Application for relief under this section shall be accompanied by a copy of the answer or other pleading proposed to be filed together with an income and expense declaration or simplified financial statement and tax returns for any relevant years. The Judicial Council may combine the application for relief under this section and the proposed answer into a single form.

(e) The burden of proving that the actual income of the defendant deviated substantially from the presumed income shall be on the defendant.

(f) A motion for relief under this section shall be filed within 90 days of the first collection of money by the district attorney or the obligee. The 90-day time period shall run from the date that the district attorney receives the first collection or from the date that the defendant is served with notice of the collection, whichever date occurs first. If service of the notice is by mail, the date of service shall be as specified in Section 1013 of the Code of Civil Procedure.

(g) In all proceedings under this section, before granting relief, the court shall consider the amount of time that has passed since the entry of the order, the circumstances surrounding the defendant's default, the relative hardship on the child or children to whom the duty of support is owed, the caretaker parent, and the defendant, and other equitable factors that the court deems appropriate.

(h) If the court grants the relief requested, the court shall issue a new child support order using the appropriate child support guidelines currently in effect. The new order shall have the same commencement date as the order set aside.

SEC. 54. Section 11475.15 is added to the Welfare and Institutions Code, to read:

11475.15. (a) The district attorney may refer child support obligations that are not delinquent, or past due amounts, to the Franchise Tax Board pursuant to Section 19271.5 of the Revenue and Taxation Code.

(b) The district attorney is the public agency responsible for administering wage withholding for the purposes of Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.). To enhance child support enforcement, the district attorney may delegate this responsibility to the Franchise Tax Board for purposes of collecting child support payments that are not delinquent, or past due amounts, as authorized under subdivision (a) of Section 19271.5 of the Revenue and Taxation Code.

Nothing in this section shall limit the authority of the district attorney granted by other sections of this code or otherwise granted by law, except to the extent that the law is inconsistent with the authority to refer child support accounts to the Franchise Tax Board for collection pursuant to Section 19271.5 of the Revenue and Taxation Code.

SEC. 55. Section 11478 of the Welfare and Institutions Code is amended to read:

11478. (a) All state, county, and local agencies shall cooperate with the district attorney (1) in carrying out Chapter 8 (commencing with Section 3130) of Part 2 of Division 8 of the Family Code concerning the location, seizure, and recovery of abducted, concealed, or detained minor children, (2) in the enforcement of any child support obligation or to the extent required under the state plan under Section 11475.2 of this code, Chapter 6 (commencing with Section 4800) of Part 5 of Division 9 of the Family Code, and Section 270 of the Penal Code, and (3) the enforcement of spousal support orders and in the location of parents or putative parents. This subdivision applies irrespective of whether the children are or are not receiving aid to families with dependent children.

(b) On request, all state, county, and local agencies shall supply the district attorney of any county in this state or the California Parent Locator Service with all information on hand relative to the location, income, or property of any parents, putative parents,

spouses, or former spouses, notwithstanding any other provision of law making the information confidential, and with all information on hand relative to the location and prosecution of any person who has, by means of false statement or representation or by impersonation or other fraudulent device, obtained aid for a child under this chapter.

(c) The State Department of Social Services' Statewide Automated Child Support System, or its replacement, shall be entitled to the same cooperation and information provided to the California Parent Locator Service, to the extent allowed by law. The Statewide Automated Child Support System, or its replacement, shall be allowed access to criminal offender record information only to the extent that access is allowed by law.

(d) Information exchanged between the California Parent Locator Service or the Statewide Automated Child Support System, or its replacement, and state, county, or local agencies as specified in Section 666(c)(1)(D) of Title 42 of the United States Code shall be through automated processes to the maximum extent feasible.

SEC. 56. Section 11478.1 of the Welfare and Institutions Code is amended to read:

11478.1. (a) It is the intent of the Legislature to protect individual rights of privacy, and to facilitate and enhance the effectiveness of the child and spousal support enforcement program, by ensuring the confidentiality of support enforcement and child abduction records, and to thereby encourage the full and frank disclosure of information relevant to all of the following:

(1) The establishment or maintenance of parent and child relationships and support obligations.

(2) The enforcement of the child support liability of absent parents.

(3) The enforcement of spousal support liability of the spouse or former spouse to the extent required by the state plan under Section 11475.2 of this code and Chapter 6 (commencing with Section 4800) of Part 5 of Division 9 of the Family Code.

(4) The location of absent parents.

(5) The location of parents and children abducted, concealed, or detained by them.

(b) (1) Except as provided in subdivision (c), all files, applications, papers, documents, and records established or maintained by any public entity pursuant to the administration and implementation of the child and spousal support enforcement program established pursuant to Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code and this article, shall be confidential, and shall not be open to examination or released for disclosure for any purpose not directly connected with the administration of the child and spousal support enforcement program. No public entity shall disclose any file,

application, paper, document, or record, or the information contained therein, except as expressly authorized by this section.

(2) In no case shall information be released or the whereabouts of one party disclosed to another party, or to the attorney of any other party, if a protective order has been issued by a court or administrative agency with respect to the former party, a good cause claim under Section 11477.04 has been approved or is pending, or the public agency responsible for establishing paternity or enforcing support has reason to believe that the release of the information may result in physical or emotional harm to the former party.

(3) Notwithstanding any other provision of law, a proof of service filed by the district attorney shall not disclose the address where service of process was accomplished. Instead, the district attorney shall keep the address in his or her own records. The proof of service shall specify that the address is on record at the district attorney's office and that the address may be released only upon an order from the court pursuant to paragraph (6) of subdivision (c).

(c) Disclosure of the information described in subdivision (b) is authorized as follows:

(1) All files, applications, papers, documents and records as described in subdivision (b) shall be available and may be used by a public entity for all administrative, civil, or criminal investigations, actions, proceedings, or prosecutions conducted in connection with the administration of the child and spousal support enforcement program approved under Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code, and any other plan or program described in Section 303.21 of Title 45 of the Code of Federal Regulations.

(2) A document requested by a person who wrote, prepared, or furnished the document may be examined by or disclosed to that person or his or her designee.

(3) The payment history of an obligor pursuant to a support order may be examined by or released to the court, the obligor, or the person on whose behalf enforcement actions are being taken or that person's designee.

(4) Income and expense information of either parent may be released to the other parent for the purpose of establishing or modifying a support order.

(5) Public records subject to disclosure under the Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of the Government Code) may be released.

(6) After a noticed motion and a finding by the court, in a case in which establishment or enforcement actions are being taken, that release or disclosure to the obligor or obligee is required by due process of law, the court may order a public entity that possesses an application, paper, document, or record as described in subdivision (b) to make that item available to the obligor or obligee for examination or copying, or to disclose to the obligor or obligee the

contents of that item. Article 9 (commencing with Section 1040) of Chapter 4 of Division 3 of the Evidence Code shall not be applicable to proceedings under this part. At any hearing of a motion filed pursuant to this section, the court shall inquire of the district attorney and the parties appearing at the hearing if there is reason to believe that release of the requested information may result in physical or emotional harm to a party. If the court determines that harm may occur, the court shall issue any protective orders or injunctive orders restricting the use and disclosure of the information as are necessary to protect the individuals.

(7) To the extent not prohibited by federal law or regulation, information indicating the existence or imminent threat of a crime against a minor child, or location of a concealed, detained, or abducted child or the location of the concealing, detaining, or abducting person, may be disclosed to any district attorney, any appropriate law enforcement agency, or to any state or county child protective agency, or may be used in any judicial proceedings to prosecute that crime or to protect the child.

(8) The social security number, most recent address, and the place of employment of the absent parent may be released to an authorized person as defined in Section 653(c) of Title 42 of the United States Code, only if the authorized person has filed a request for the information, and only if the information has been provided to the California Parent Locator Service by the federal Parent Locator Service pursuant to Section 653 of Title 42 of the United States Code.

(d) (1) "Administration and implementation of the child and spousal support enforcement program," as used in this section, means the carrying out of the state and local plans for establishing, modifying, and enforcing child support obligations, enforcing spousal support orders, and determining paternity pursuant to Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code and this article.

(2) For purposes of this section, "obligor" means any person owing a duty of support.

(3) As used in this chapter, "putative parent" shall refer to any person reasonably believed to be the parent of a child for whom the district attorney is attempting to establish paternity or establish, modify, or enforce support pursuant to Section 11475.1.

(e) Any person who willfully, knowingly, and intentionally violates this section is guilty of a misdemeanor.

(f) Nothing in this section shall be construed to compel the disclosure of information relating to a deserting parent who is a recipient of aid under a public assistance program for which federal aid is paid to this state, if that information is required to be kept confidential by the federal law or regulations relating to the program.

SEC. 57. Section 11478.2 of the Welfare and Institutions Code is amended to read:

11478.2. (a) In all actions involving paternity or support, including, but not limited to, proceedings under the Family Code, and under this division, the district attorney and Attorney General represent the public interest in establishing, modifying, and enforcing support obligations. No attorney-client relationship shall be deemed to have been created between the district attorney or Attorney General and any person by virtue of the action of the district attorney or the Attorney General in carrying out these statutory duties.

(b) The provisions of subdivision (a) are declarative of existing law.

(c) In all requests for services of the district attorney or Attorney General pursuant to Section 11475.1 relating to actions involving paternity or support, not later than the same day an individual makes a request for these services in person, and not later than five working days after either (1) a case is referred for services from the county welfare department, (2) receipt of a request by mail for an application for services, or (3) an individual makes a request for services by telephone, the district attorney or Attorney General shall give notice to the individual requesting services or on whose behalf services have been requested that the district attorney or Attorney General does not represent the individual or the children who are the subject of the case, that no attorney-client relationship exists between the district attorney or Attorney General and those persons, and that no such representation or relationship shall arise if the district attorney or Attorney General provides the services requested. Notice shall be in bold print and in plain English and shall be translated into the language understandable by the recipient when reasonable. The notice shall include the advice that the absence of an attorney-client relationship means that communications from the recipient are not privileged and that the district attorney or Attorney General may provide support enforcement services to the other parent in the future.

(d) The district attorney or Attorney General shall give the notice required pursuant to subdivision (c) to all recipients of services under Section 11475.1 who have not otherwise been provided that notice, not later than the date of the next annual notice required under Section 11476.2. This notice shall include notification to the recipient of services under Section 11475.1 that the recipient may inspect the clerk's file at the county clerk's office, and that, upon request, the district attorney, or, if appropriate, the Attorney General, will furnish a copy of the most recent order entered in the case.

(e) The district attorney, or, if appropriate, the Attorney General, shall serve a copy of the complaint for paternity or support, or both on recipients of support services under Section 11475.1, as specified in paragraph (2) of subdivision (e) of Section 11350.1. A notice shall accompany the complaint which informs the recipient that the

district attorney or Attorney General may enter into a stipulated order resolving the complaint, and that if the recipient wishes to assist the prosecuting attorney, he or she should send all information on the noncustodial parent's earnings and assets to the prosecuting attorney.

(f) (1) The district attorney or Attorney General shall provide written notice to recipients of services under Section 11475.1 of the initial date and time, and purpose of every hearing in a civil action for paternity or support. The notice shall include the following language:

IMPORTANT NOTICE

It may be important that you attend the hearing. The district attorney does not represent you or your children. You may have information about the noncustodial parent, such as information about his or her income or assets, or your need for support that will not be presented to the court unless you attend the hearing. You have the right to be heard in court and tell the court what you think the court should do with the child support order.

If you have a court order for support that arose as part of your divorce, this hearing could change your rights or your children's rights to support. You have the right to attend the hearing and, the right, to be heard.

If you would like to attend the hearing and be told about any changes to the hearing date or time, notify this office by _____. The district attorney or Attorney General will then have to tell you about any changes to the hearing date or time.

(2) The notice shall state the purpose of the hearing or be attached to the motion or other pleading which caused the hearing to be scheduled.

(3) The notice shall be provided separate from all other material and shall be in at least 14-point type. The failure of the district attorney or Attorney General to comply with this subdivision shall not affect the validity of any order.

(4) The notice shall be provided not later than seven calendar days prior to the hearing, or, if the district attorney or Attorney General receives notice of the hearing less than seven days prior to the hearing, within two days of the receipt by the district attorney or Attorney General of the notice of the hearing.

(5) The district attorney or Attorney General shall, in order to implement this subdivision, make reasonable efforts to ensure that the district attorney or Attorney General has current addresses for recipients of support enforcement services.

(g) The district attorney or Attorney General shall give notice to recipients of services under Section 11475.1 of every order obtained by the district attorney or Attorney General that establishes or modifies the support obligation for the recipient or the children who are the subject of the order, by sending a copy of the order to the recipient. The notice shall be made within 30 calendar days after the order has been filed. The district attorney or Attorney General shall also give notice to these recipients of every order obtained in any other jurisdiction, that establishes or modifies the support obligation for the recipient or the children who are the subject of the order, and which is received by the district attorney or Attorney General, by sending a copy of the order to the recipient within the timeframe specified by federal law after the district attorney or Attorney General has received a copy of the order. In any action enforced under Chapter 6 (commencing with Section 4800) of Part 5 of Division 9 of the Family Code, the notice shall be made in compliance with the requirements of that chapter. The failure of the district attorney or Attorney General to comply with this subdivision shall not affect the validity of any order.

(h) The district attorney or Attorney General shall give notice to the noncustodial parent against whom a civil action is filed that the district attorney or Attorney General is not the attorney representing any individual, including, but not limited to, the custodial parent, the child, or the noncustodial parent.

(i) Nothing in this section shall be construed to preclude any person who is receiving services under Section 11475.1 from filing and prosecuting an independent action to establish, modify, and enforce an order for current support on behalf of himself or herself or a child if that person is not receiving public assistance.

(j) A person who is receiving services under Section 11475.1 but who is not currently receiving public assistance on his or her own behalf or on behalf of a child shall be asked to execute, or consent to, any stipulation establishing or modifying a support order in any action in which that person is named as a party, before the stipulation is filed. The district attorney or Attorney General shall not submit to the court for approval a stipulation to establish or modify a support order in such an action without first obtaining the signatures of all parties to the action, their attorneys of record, or persons authorized to act on their behalf.

(k) The district attorney or Attorney General shall not enter into a stipulation which reduces the amount of past due support, including interest and penalties accrued pursuant to an order of current support, on behalf of a person who is receiving support enforcement services under Section 11475.1 and who is owed support arrearages that exceed unreimbursed public assistance paid to the recipient of the support enforcement services, without first obtaining the consent of the person who is receiving services under Section 11475.1 on his or her own behalf or on behalf of the child.

(*l*) The notices required in this section shall be provided in the following manner:

(1) In all cases in which the person receiving services under Section 11475.1 resides in California, notice shall be provided by mailing the item by first-class mail to the last known address of, or personally delivering the item to, that person.

(2) In all actions enforced under Chapter 6 (commencing with Section 4800) of Part 5 of Division 9 of the Family Code, unless otherwise specified, notice shall be provided by mailing the item by first-class mail to the initiating court.

(m) Notwithstanding any other provision of this section, the notices provided for pursuant to subdivisions (c) to (g), inclusive, shall not be required in foster care cases.

SEC. 58. Section 11478.5 of the Welfare and Institutions Code is amended to read:

11478.5. (a) There is in the Department of Justice the California Parent Locator Service and Central Registry which shall collect and disseminate all of the following, with respect to any parent, putative parent, spouse, or former spouse:

(1) The full and true name of the parent together with any known aliases.

(2) Date and place of birth.

(3) Physical description.

(4) Social security number.

(5) Employment history and earnings.

(6) Military status and Veterans Administration or military service serial number.

(7) Last known address, telephone number, and date thereof.

(8) Driver's license number, driving record, and vehicle registration information.

(9) Criminal, licensing, and applicant records and information.

(10) (A) Any additional location, asset, and income information, including income tax return information obtained pursuant to Section 19285.1 of the Revenue and Taxation Code, and the address, telephone number, and social security information obtained from a public utility or cable television corporation that may be of assistance in locating the parent, putative parent, abducting, concealing, or detaining parent, spouse, or former spouse, in establishing a parent and child relationship, in enforcing the child support liability of the absent parent, or enforcing the spousal support liability of the spouse or former spouse to the extent required by the state plan pursuant to Section 11475.2.

(B) For purposes of this subdivision "income tax return information" means all of the following regarding the taxpayer:

(i) Assets.

(ii) Credits.

(iii) Deductions.

(iv) Exemptions.

(v) Identity.
(vi) Liabilities.
(vii) Nature, source, and amount of income.
(viii) Net worth.
(ix) Payments.
(x) Receipts.
(xi) Address.
(xii) Social security number.

(b) To effectuate the purposes of this section, the Statewide Automated Child Support System, or its replacement, the California Parent Locator Service and Central Registry, and the Franchise Tax Board shall utilize the federal Parent Locator Service to the extent necessary, and may request and shall receive from all departments, boards, bureaus, or other agencies of the state, or any of its political subdivisions, and those entities shall provide, that assistance and data which will enable the State Department of Social Services, the Department of Justice, and other public agencies to carry out their powers and duties to locate parents, spouses, and former spouses, and to identify their assets, to establish parent-child relationships, and to enforce liability for child or spousal support, and for any other obligations incurred on behalf of children, and shall also provide that information to any district attorney in fulfilling the duties prescribed in Section 270 of the Penal Code, and in Chapter 8 (commencing with Section 3130) of Part 2 of Division 8 of the Family Code, relating to abducted, concealed, or detained children. The State Department of Social Services' Statewide Automated Child Support System, or its replacement, shall be entitled to the same cooperation and information as the California Parent Locator Service, to the extent allowed by law. The Statewide Automated Child Support System, or its replacement, shall be allowed access to criminal record information only to the extent that access is allowed by state and federal law.

(c) (1) To effectuate the purposes of this section, and notwithstanding any other provision of California law, regulation, or tariff, and to the extent permitted by federal law, the California Parent Locator Service and Central Registry and the Statewide Automated Child Support System, or its replacement, may request and shall receive from public utilities, as defined in Section 216 of the Public Utilities Code, and cable television corporations, as defined in Section 215.5, customer service information, including the full name, address, telephone number, date of birth, employer name and address, and social security number of customers of the public utility or the cable television corporation, to the extent that this information is stored within the computer data base of the public utility or the cable television corporation.

(2) In order to protect the privacy of utility and cable television customers, a request to a public utility or cable television corporation

for customer service information pursuant to this section shall meet the following requirements:

(A) Be submitted to the public utility or cable television corporation in writing, on a transmittal document prepared by the California Parent Locator Service and Central Registry or the Statewide Automated Child Support System, or its replacement, and approved by all of the public utilities and cable television corporations. The transmittal shall be deemed to be an administrative subpoena for customer service information.

(B) Have the signature of a representative authorized by the California Parent Locator Service and Central Registry or the Statewide Automated Child Support System, or its replacement.

(C) Contain at least three of the following data elements regarding the person sought:

(i) First and last name, and middle initial, if known.

(ii) Social security number.

(iii) Driver's license number.

(iv) Birth date.

(v) Last known address.

(vi) Spouse's name.

(D) The California Parent Locator Service and Central Registry and the Statewide Automated Child Support System, or its replacement, shall ensure that each public utility and cable television corporation has at all times a current list of the names of persons authorized to request customer service information.

(E) The California Statewide Automated Child Support System, or its replacement, and the California Parent Locator Service and Central Registry shall ensure that customer service information supplied by a public utility or cable television corporation is applicable to the person who is being sought before releasing the information pursuant to subdivision (d).

(3) The public utility or cable television corporation may charge a fee to the California Parent Locator Service and Central Registry or the Statewide Automated Child Support System, or its replacement, for each search performed pursuant to this subdivision to cover the actual costs to the public utility or cable television corporation for providing this information.

(4) No public utility or cable television corporation, or official or employee thereof, shall be subject to criminal or civil liability for the release of customer service information as authorized by this subdivision.

(d) Notwithstanding Section 14202 of the Penal Code, any records established pursuant to this section shall be disseminated only to the Department of Justice, the Statewide Automated Child Support System or its replacement, the California Parent Locator Service and Central Registry, the parent locator services and central registries of other states as defined by federal statutes and regulations, a district attorney of any county in this state, the federal Parent Locator

Service, and official child support enforcement agencies. The State Department of Social Services' Statewide Automated Child Support Enforcement System, or its replacement, shall be allowed access to criminal offender record information only to the extent that access is allowed by law.

(e) (1) At no time shall any information received by the California Parent Locator Service and Central Registry or by the Statewide Automated Child Support System, or its replacement, be disclosed to any person, agency, or other entity, other than those persons, agencies, and entities specified pursuant to Section 11478, this section, or any other provision of law.

(2) This subdivision shall not otherwise affect discovery between parties in any action to establish, modify, or enforce child, family, or spousal support, that relates to custody or visitation.

(f) (1) The Department of Justice, in consultation with the State Department of Social Services, shall promulgate rules and regulations to facilitate maximum and efficient use of the California Parent Locator Service and Central Registry.

(2) The State Department of Social Services, the Public Utilities Commission, and the cable television corporations shall develop procedures for obtaining the information described in subdivision (c) from public utilities, and for compensating the public utilities and cable television corporations for providing that information.

(g) The California Parent Locator Service and Central Registry may charge a fee not to exceed eighteen dollars ($18) for any service it provides pursuant to this section that is not performed or funded pursuant to Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code.

(h) This section shall be construed in a manner consistent with the other provisions of this article.

SEC. 59. Section 11478.51 of the Welfare and Institutions Code is amended to read:

11478.51. The Employment Development Department shall, when requested by the State Department of Social Services, the Franchise Tax Board for purposes of administering Article 5 (commencing with Section 19271) of Chapter 5 of Part 10.2 of Division 2 of the Revenue and Taxation Code, the federal Parent Locator Service, or the California Parent Locator Service, provide access to information collected pursuant to Section 1088.5 of the Unemployment Insurance Code to the requesting department or agency for purposes of administering the child support enforcement program, and for purposes of verifying employment of applicants and recipients of aid under this chapter or food stamps under Chapter 10 (commencing with Section 18900) of Part 6.

SEC. 60. Section 11478.8 of the Welfare and Institutions Code is amended to read:

11478.8. (a) Upon receipt of a written request from a district attorney enforcing the obligation of parents to support their children

pursuant to Section 11475.1, or from an agency of another state enforcing support obligations pursuant to Section 654 of Title 42 of the United States Code, every employer, as specified in Section 5210 of the Family Code, and every labor organization shall cooperate with and provide relevant employment and income information which they have in their possession to the district attorney or other requesting agency for the purpose of establishing, modifying, or enforcing the support obligation. No employer or labor organization shall incur any liability for providing this information to the district attorney or other requesting agency.

Relevant employment and income information shall include, but not be limited to, all of the following:

(1) Whether a named person has or has not been employed by an employer or whether a named person has or has not been employed to the knowledge of the labor organization.

(2) The full name of the employee or member or the first and middle initial and last name of the employee or member.

(3) The employee's or member's last known residence address.

(4) The employee's or member's date of birth.

(5) The employee's or member's social security number.

(6) The dates of employment.

(7) All earnings paid to the employee or member and reported as W-2 compensation in the prior tax year and the employee's or member's current basic rate of pay.

(8) Other earnings, as specified in Section 5206 of the Family Code, paid to the employee or member.

(9) Whether dependent health insurance coverage is available to the employee through employment or membership in the labor organization.

The district attorney or other agency shall notify the employer and labor organization of the district attorney case file number in making a request pursuant to this section. The written request shall include at least three of the following elements regarding the person who is the subject of the inquiry: (A) first and last name and middle initial, if known; (B) social security number; (C) driver's license number; (D) birth date; (E) last known address; or (F) spouse's name.

The district attorney or other requesting agency shall send a notice that a request for this information has been made to the last known address of the person who is the subject of the inquiry.

(b) An employer or labor organization which fails to provide relevant employment information to the district attorney or other requesting agency within 30 days of receiving a request pursuant to subdivision (a) may be assessed a civil penalty of a maximum of one thousand dollars ($1,000), plus attorneys' fees and costs. Proceedings to impose the civil penalty shall be commenced by the filing and service of an order to show cause.

(c) "Labor organization," for the purposes of this section means a labor organization as defined in Section 1117 of the Labor Code or

any related benefit trust fund covered under the federal Employee Retirement Income Security Act of 1974 (Chapter 18 (commencing with Section 1001) of Title 29 of the United States Code).

(d) Any reference to the district attorney in this section shall apply only when the district attorney is otherwise ordered or required to act pursuant to existing law. Nothing in this section shall be deemed to mandate additional enforcement or collection duties upon the district attorney beyond those imposed under existing law on the effective date of this section.

SEC. 61. Section 11478.9 is added to the Welfare and Institutions Code, to read:

11478.9. (a) It is the intent of the Legislature to protect individual rights of privacy, and to facilitate and enhance the effectiveness of the child abduction and recovery programs, by ensuring the confidentiality of child abduction records, and to thereby encourage the full and frank disclosure of information relevant to all of the following:

(1) The establishment or maintenance of parent and child relationships and support obligations.

(2) The enforcement of the child support liability of absent parents.

(3) The enforcement of spousal support liability of the spouse or former spouse to the extent required by the state plan under Section 11475.2 of this code and Chapter 6 (commencing with Section 4800) of Part 5 of Division 9 of the Family Code.

(4) The location of absent parents.

(5) The location of parents and children abducted, concealed, or detained by them.

(b) (1) Except as provided in this subdivision, all files, applications, papers, documents, and records, established or maintained by any public entity for the purpose of locating an abducted child, locating a person who has abducted a child, or prosecution of a person who has abducted a child shall be confidential, and shall not be open to examination or released for disclosure for any purpose not directly connected with locating or recovering the abducted child or abducting person or prosecution of the abducting person.

(2) Except as provided in subdivision (c), no public entity shall disclose any file, application, paper document, or record described in this section, or the information contained therein.

(c) (1) All files, application, papers, documents, and records as described in subdivision (b) shall be available and may be used by a public entity for all administrative, civil, or criminal investigations, actions, proceedings, or prosecution conducted in connection with the child abduction or prosecution of the abducting person.

(2) A document requested by a person who wrote, prepared, or furnished the document may be examined by or disclosed to that person or his or her designee.

(3) Public records subject to disclosure under Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code may be released.

(4) After a noticed motion and a finding by the court, in a case in which child recovery or abduction prosecution actions are being taken, that release or disclosure is required by due process of law, the court may order a public entity that possesses an application, paper, document, or record described in this subdivision to make that item available to the defendant or other party for examination or copying, or to disclose to an appropriate person the contents of that item. Article 9 (commencing with Section 1040) of Chapter 4 of Division 8 of the Evidence Code shall not be applicable to proceedings under this part.

(5) To the extent not prohibited by federal law or regulation, information indicating the existence or imminent threat of a crime against a minor child, or location of a concealed or abducted child or the location of the concealing or abducting person, may be disclosed to any appropriate law enforcement agency, or to any state or county child protective agency, or may be used in any judicial proceedings to prosecute that crime or to protect the child.

(6) Information may be released to any state or local agency for the purposes connected with establishing, modifying, and enforcing child support obligations, enforcing spousal support orders, and determining paternity as required by Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code and this article.

SEC. 62. Section 11489 of the Welfare and Institutions Code is amended to read:

11489. After judgment in any court action brought to enforce the support obligation of a noncustodial parent pursuant to the provisions of this chapter, the court shall issue an earnings assignment order for support pursuant to Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code.

SEC. 63. Section 14008.6 of the Welfare and Institutions Code is amended to read:

14008.6. As a condition of eligibility for medical services provided under this chapter or Chapter 8 (commencing with Section 14200), each applicant or beneficiary shall:

(a) Assign to the state any rights to medical support and to payments for medical care from a third party that an individual may have in his of her own behalf or in behalf of any other family member for whom that individual has the legal authority to assign such rights, and is applying for or receiving medical services. Receipt of medical services under this chapter or Chapter 8 (commencing with Section 14200) shall operate as an assignment by operation of law. If those rights are assigned pursuant to this subdivision, the assignee may become an assignee of record by the district attorney or other public official filing with the court clerk an affidavit showing that an

assignment has been made or that there has been an assignment by operation of law. This procedure does not limit any other means by which the assignee may become an assignee of record.

(b) Cooperate, as defined by subdivision (b) of Section 11477, with the district attorney in establishing the paternity of a child born out of wedlock with respect to whom medical services are requested or claimed, and for whom that individual can legally assign the rights described in subdivision (a), and in obtaining any medical support, as provided in Section 11475.1, and payments, as described in subdivision (a), due any person for whom medical services are requested or obtained.

(c) Cooperate with the state in identifying and providing information to assist the state in pursuing any third party who may be liable to pay for care and services available under the Medi-Cal program.

(d) The district attorney shall verify that the applicant or recipient refused to offer reasonable cooperation prior to determining that the applicant or recipient is ineligible. The granting of medical services shall not be delayed or denied if the applicant is otherwise eligible, if the applicant completes the necessary forms and agrees to cooperate with the district attorney in securing medical support and determining paternity, where applicable.

(e) An applicant or beneficiary shall be considered to be cooperating with the district attorney's office and shall be eligible for medical services, if otherwise eligible, if the applicant or beneficiary cooperates to the best of his or her ability or has good cause for refusal to cooperate with the requirements in subdivisions (b) and (c), as defined by Section 11477.04. The county welfare department shall make the determination of whether good cause for refusal to cooperate exists.

The county welfare department and the district attorney shall ensure that all applicants for or beneficiaries of medical services under this chapter or Chapter 8 (commencing with Section 14200) are properly notified of the conditions imposed by this section.

SEC. 64. Section 14008.7 is added to the Welfare and Institutions Code, to read:

14008.7. If the applicant or beneficiary does not cooperate in the manner described in subdivisions (b) and (c) of Section 14008.6 to establish paternity and medical support orders against the noncustodial parents of each of the children for whom Medi-Cal services are requested or received, without good cause, as described in Section 11477.04, the applicant or beneficiary shall be ineligible for aid under this chapter or Chapter 8 (commencing with Section 14200). An applicant's or beneficiary's refusal to cooperate shall not effect the eligibility of the child or children. If otherwise eligible, the child or children may be granted Medi-Cal or continue to receive Medi-Cal.

SEC. 65. This act shall become operative only if Assembly Bill 1395 and Senate Bill 247, both of the 1997–98 Regular Session, are enacted and become effective on or before January 1, 1998.

CHAPTER 600

An act to amend Sections 18640, 18648, 19008, 19049, 19064, 19104, 19111, 19132, 19280, 19290, 19503, 19717, 21013, 21016, and 21019 of, to add Sections 21022, 21023, 21024, 21025, 21026, and 21027 to, and to repeal Section 18525 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 1, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Section 18525 of the Revenue and Taxation Code is repealed.

SEC. 2. Section 18640 of the Revenue and Taxation Code is amended to read:

18640. (a) Any corporation allocating amounts as patronage dividends, rebates, or refunds (whether in cash, merchandise, capital stock, revolving fund certificates, retain certificates, certificates of indebtedness, letters of advice, or in some other manner that discloses to each patron the amount of the dividend, refund, or rebate) shall render a correct return that shall contain or be verified by a written declaration that it is made under the penalty of perjury, stating both of the following:

(1) The name and address of each patron to whom it has made those allocations amounting to one hundred dollars ($100) or more during the calendar year.

(2) The amount of those allocations to each patron.

If required by the Franchise Tax Board, any corporation described in this subdivision shall render a correct return, which shall contain or be verified by a written declaration that it is under penalty of perjury, of all patronage dividends, rebates, or refunds made during the calendar year to its patrons. This section shall not apply in the case of any corporation exempt from tax under Article 1 (commencing with Section 23701) of Chapter 4 of Part 11.

(b) Every cooperative required to make a return under subdivision (a) shall furnish to each person whose name is required to be set forth in that return a written statement showing both of the following:

(1) The name, address, and telephone number of the cooperative required to make that return.

(2) The aggregate amount of the allocations required to be made to the person as shown on that return.

(c) The written statement required under subdivision (b) shall be furnished (either in person or in a separate mailing by first-class mail which includes adequate notice that the statement is enclosed) to the person on or before January 31 of the year following the calendar year for which the return under subdivision (a) was required to be made, and shall be in the form which the Franchise Tax Board may prescribe.

(d) The amendments made by this act adding this subdivision are operative for information returns required to be filed on or after January 1, 1999.

SEC. 3. Section 18648 of the Revenue and Taxation Code is amended to read:

18648. (a) Any person who is a promoter of tax shelters, as defined in subdivision (c), shall, within 60 days of a request, make a complete return to the Franchise Tax Board containing the full identification of each investment sold during the reporting period. For each investment, all of the following information shall be provided:

(1) Name of investment.

(2) Description of the business activities of the investment.

(3) Form of investment, such as limited partnership, limited liability company, investment plan, or arrangement.

(4) A list of investors showing full name, address, social security number, and the amount invested by each investor in the investment during the reporting period.

(5) The total amount invested by all investors during the reporting period in the investment.

(6) Any other related information which the Franchise Tax Board may request.

The return shall be verified by a written declaration that it is made under penalty of perjury.

(b) Every person making a return under subdivision (a) shall furnish, within 60 days of the request, to each investor whose name is set forth in the return a written statement showing all of the following:

(1) The name, address, and telephone number of the person making the return.

(2) The aggregate amount of investments of each investor as shown on that return for each reporting period.

(c) For purposes of this section, the term "a promoter of tax shelters" shall mean any person who:

(1) (A) Organizes (or assists in the organization of) any entity, any investment plan or arrangement, or any other plan or arrangement which generates a loss for any investor in excess of his or her cash investment from an activity described in Section 465(c) of the Internal Revenue Code.

(B) Participates in the sale of any interest in any entity or plan or arrangement referred to in subparagraph (A).

(2) Makes or furnishes (in connection with that organization or sale):

(A) A statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement.

(B) A statement as to the value of any property or services.

(d) A promoter of tax shelters shall keep records necessary to substantiate the information required to be contained on a return.

(e) "Reporting period," as used in subdivision (a), shall mean each calendar year specified on the request from the Franchise Tax Board.

(f) A return filed by a partnership or limited liability company classified as a partnership for California income tax purposes under this part shall be deemed to have satisfied the reporting requirement of this section for the reporting period covered by the partnership or limited liability company return with respect to the investors in the partnership.

(g) The Franchise Tax Board shall establish a review process for all requests for information under this section comparable to the process of obtaining an administrative subpoena, including the requirement that a member of the Franchise Tax Board shall approve each request.

(h) The amendments made by the act adding this subdivision are operative for information returns required to be filed on or after January 1, 1999.

SEC. 4. Section 19008 of the Revenue and Taxation Code is amended to read:

19008. (a) The Franchise Tax Board may, in cases of financial hardship, as determined by the Franchise Tax Board, allow an individual or fiduciary to enter into installment payment agreements with the Franchise Tax Board to pay taxes due, plus applicable interest and penalties over the life of the installment period. Failure by an individual or fiduciary to comply fully with the terms of the installment payment agreement shall render the agreement null and void, unless the Franchise Tax Board determines that the failure was due to a reasonable cause, and the total amount of tax, interest, and all penalties shall be immediately due and payable.

(b) Except in any case where the Franchise Tax Board finds collection of the tax to which an installment payment agreement relates to be in jeopardy, or there is a mutual consent to terminate, alter, or modify the agreement, the agreement shall not be considered null and void, or otherwise terminated, unless both of the following occur:

(1) A notice of termination is provided to the individual or fiduciary not later than 30 days before the date of termination.

(2) The notice includes an explanation of why the Franchise Tax Board intends to terminate the agreement.

(c) The Taxpayers' Advocate shall establish procedures for an independent departmental administrative review for installment payment agreements that are rendered null and void, or otherwise terminated under this section, for individuals or fiduciaries who request that review. This administrative review shall not stay collection of the tax to which the installment payment agreement relates.

(d) The amendments made by the act adding this subdivision are operative January 1, 1998.

SEC. 5. Section 19049 of the Revenue and Taxation Code is amended to read:

19049. (a) When a deficiency is determined and the assessment becomes final, the Franchise Tax Board shall mail notice and demand to the taxpayer for the payment thereof. The deficiency assessed is due and payable at the expiration of 15 days from the date of the notice and demand.

(b) The amendments made by the act adding this subdivision are operative for notices issued on or after January 1, 1998.

SEC. 6. Section 19064 of the Revenue and Taxation Code is amended to read:

19064. (a) If any person initiates a motion to quash a subpoena, as provided by Sections 7465 to 7476, inclusive, of the Government Code, and that person is the person with respect to whose liability the subpoena is issued (or is the agent, nominee, or other person acting under the direction or control of that person), then the running of any period of limitations under Section 19057 (relating to deficiency assessments), Section 19087 (relating to false or fraudulent returns), or Section 19704 (relating to criminal prosecutions) with respect to that person shall be suspended for the period during which a proceeding, and appeals therein, with respect to the enforcement of the subpoena is pending.

(b) In the absence of the resolution of a response to a subpoena served to a third-party recordkeeper (as defined in Section 7609(a)(3) of the Internal Revenue Code, as amended by Section 1001 of Public Law 104-168) issued under Section 19504 (power of examination) the running of any period of limitations under Section 19057 (relating to deficiency assessments), Section 19087 (relating to false or fraudulent returns), or Section 19704 (relating to criminal prosecutions) with respect to any person whose liability the subpoena was issued (other than a person taking action as provided by subdivision (a)) shall be suspended for the period beginning on the date which is six months after the service of the subpoena and ending with the final resolution of that response.

SEC. 7. Section 19104 of the Revenue and Taxation Code is amended to read:

19104. (a) Interest upon the amount assessed as a deficiency shall be assessed, collected, and paid in the same manner as the tax at the adjusted annual rate established pursuant to Section 19521 from the date prescribed for the payment of the tax or, if the tax is paid in installments, from the date prescribed for payment of the first installment, until the date the tax is paid. If any portion of the deficiency is paid prior to the date it is assessed, interest shall accrue on such portion only to the date paid.

(b) If the Franchise Tax Board makes or allows a refund or credit which it determines to be erroneous, in whole or in part, the amount erroneously made or allowed may be assessed and collected after notice and demand pursuant to Section 19051 (pertaining to mathematical errors), except that the rights of protest and appeal shall apply with respect to amounts assessable as deficiencies without regard to the running of any period of limitations provided elsewhere in this part. Notice and demand for repayment must be made within two years after the refund or credit was made or allowed, or during the period within which the Franchise Tax Board may mail a notice of proposed deficiency assessment, whichever period expires the later. Interest on amounts erroneously made or allowed shall not accrue until 30 days from the date the Franchise Tax Board mails a notice and demand for repayment as provided by this subdivision.

(c) (1) In the case of any assessment of interest, the Franchise Tax Board may abate the assessment of all or any part of that interest for any period in either of the following circumstances:

(A) Any deficiency attributable in whole or in part to any unreasonable error or delay by an officer or employee of the Franchise Tax Board (acting in his or her official capacity) in performing a ministerial or managerial act.

(B) Any payment of any tax described in Section 19033 to the extent that any delay in that payment is attributable to that officer or employee being dilatory in performing a ministerial or managerial act.

(C) For purposes of this paragraph:

(i) An error or delay shall be taken into account only if no significant aspect of that error or delay can be attributed to the taxpayer involved, and after the Franchise Tax Board has contacted the taxpayer in writing with respect to that deficiency or payment.

(ii) Within 180 days after the Franchise Tax Board mails its notice of determination not to abate interest, a taxpayer may appeal the Franchise Tax Board's determination to the State Board of Equalization. The State Board of Equalization shall have jurisdiction over the appeal to determine whether the Franchise Tax Board's failure to abate interest under this section was an abuse of discretion, and may order an abatement.

(iii) Except for the amendment adding clause (ii), the amendments made by the act adding this clause are operative with respect to taxable or income years beginning on or after January 1,

1998. The amendment adding clause (ii) is operative for requests for abatement made on or after January 1, 1998.

(2) The Franchise Tax Board shall abate the assessment of all interest on any erroneous refund for which an action for recovery is provided under Section 19411 until 30 days after the date demand for repayment is made, unless either of the following has occurred:

(A) The taxpayer (or a related party) has in any way caused that erroneous refund.

(B) That erroneous refund exceeds fifty thousand dollars ($50,000).

SEC. 8. Section 19111 of the Revenue and Taxation Code is amended to read:

19111. (a) If notice is made for payment of any amount, and if that amount is paid within 15 days after the date of the notice, interest under this article on the amount so paid shall not be imposed for the period after the date of the notice.

(b) The amendments made by the act adding this subdivision are operative for notices issued on or after January 1, 1998.

SEC. 9. Section 19132 of the Revenue and Taxation Code is amended to read:

19132. (a) (1) Unless it is shown that the failure is due to reasonable cause and not due to willful neglect, a penalty computed in accordance with paragraph (2) is hereby imposed in the case of failure to pay any of the following:

(A) The amount shown as tax on any return on or before the date prescribed for payment of that tax determined with regard to any extension of time for payment.

(B) Any amount in respect of any tax required to be shown on a return which is not so shown including an assessment made pursuant to Section 19051 within 15 days of the date of the notice and demand therefor.

(C) The amount required to be paid by Section 19021, if applicable, that is not paid.

(D) The amount required to be paid by Section 17941 or 23091, if applicable, that is not paid.

(E) The amount required to be paid by Section 17951 or 23097, if applicable, that is not paid.

(2) The penalty imposed under paragraph (1) shall consist of both of the following:

(A) Five percent of the total tax unpaid as defined in subdivision (c).

(B) An amount computed at the rate of 0.5 percent per month of the "remaining tax" as defined in subdivision (d) for each additional month or fraction thereof not to exceed 40 months during which the "remaining tax" is greater than zero.

(3) The aggregate amount of penalty imposed by this subdivision shall not exceed 25 percent of the total unpaid tax and shall be due and payable upon notice and demand by the Franchise Tax Board.

The tender of a check or money order does not constitute payment of the tax for purposes of this section unless the check or money order is paid on presentment.

(b) The penalty prescribed by subdivision (a) shall not be assessed if, for the same taxable year, the sum of any penalties imposed under Section 19131 relating to failure to file return and Section 19133 relating to failure to file return after demand is equal to or greater than the subdivision (a) penalty. In the event the penalty imposed under subdivision (a) is greater than the sum of any penalties imposed under Sections 19131 and 19133, the penalty imposed under subdivision (a) shall be the amount which exceeds the sum of any penalties imposed under Sections 19131 and 19133.

(c) For purposes of this section, total tax unpaid means the amount of tax shown on the return reduced by both of the following:

(1) The amount of any part of the tax which is paid on or before the date prescribed for payment of the tax.

(2) The amount of any credit against the tax which may be claimed upon the return.

(d) For purposes of this section, "remaining tax" means total tax unpaid reduced by the amount of any payment of the tax.

(e) If the amount required to be shown as a tax on a return is less than the amount shown as tax on that return, subdivisions (a), (c), and (d) shall be applied by substituting that lower amount.

(f) No interest shall accrue on the portion of the penalty prescribed in subparagraph (B) of paragraph (2) of subdivision (a).

(g) The amendments made by the act adding this subdivision are operative for notices issued on or after January 1, 1998.

SEC. 10. Section 19280 of the Revenue and Taxation Code is amended to read:

19280. (a) Fines, state or local penalties, forfeitures, restitution fines, or restitution orders imposed by a superior, municipal, or justice court of the State of California upon a person or any other entity that is in an amount totaling no less than two hundred fifty dollars ($250), in the aggregate, and due a county or the state for criminal offenses, including all offenses involving a violation of the Vehicle Code except offenses relating to parking or registration or offenses by pedestrians or bicyclists, may, no sooner than 90 days after payment of that amount becomes delinquent, be referred by the county or the state to the Franchise Tax Board for collection under guidelines prescribed by the Franchise Tax Board. The Franchise Tax Board shall establish criteria for referral, which shall include setting forth a minimum dollar amount subject to referral and collection.

(b) For the period January 1, 1995, to December 31, 1997, inclusive, for purposes of a manageable implementation and evaluation of the program authorized by this article, the Franchise Tax Board may limit referrals to nine counties.

(c) Upon written notice to the obligor from the Franchise Tax Board, any amount referred to the Franchise Tax Board under

subdivision (a) and any interest thereon, including any interest on the amount referred under subdivision (a) that accrued prior to the date of referral, shall be treated as final and due and payable to the State of California, and shall be collected from the obligor by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent personal income tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(d) (1) Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), and Part 11 (commencing with Section 23001) shall apply to amounts referred under this article in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that any provision is either inconsistent with this article or is not relevant to this article.

(2) Any information, information sources, or enforcement remedies and capabilities available to the court referring the amount due described in subdivision (a), shall be available to the Franchise Tax Board to be used in conjunction with, or independent of, the information, information sources, or remedies and capabilities available to the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), or Part 11 (commencing with Section 23001).

(e) The activities required to implement and administer this part shall not interfere with the primary mission of the Franchise Tax Board to administer Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001).

(f) For amounts referred for collection under subdivision (a), interest shall accrue at the greater of the rate applicable to the amount due being collected or the rate provided under Section 19521. When notice of the amount due includes interest and is mailed to the obligor and the amount is paid within 15 days after the date of notice, interest shall not be imposed for the period after the date of notice.

(g) In no event shall a collection under this article be construed as a payment of income taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(h) The amendments made by the act adding this subdivision are operative for notices issued on or after January 1, 1998.

SEC. 11. Section 19290 of the Revenue and Taxation Code is amended to read:

19290. (a) The Department of Industrial Relations shall enter into an agreement with the Franchise Tax Board that transfers responsibility from the department to the Franchise Tax Board for the collection of delinquent fees, wages, penalties, and costs, and any

interest thereon, effective July 1, 1995. Under the agreement, the Franchise Tax Board shall collect unsatisfied judgments that are issued pursuant to Sections 98.2, 226.5, 1023, 1289, 2681, and 6650 of the Labor Code. The agreement shall also provide for the collection of delinquent debts that result from a final determination by the department after the exhaustion of appeal remedies pursuant to Sections 98.3, 210, 1174.5, 1193.6, 1194, 1194.2, 1197.1, 1197.5, 1771, 1774, 3722, 7314, 7350, 7721, and 7904 of the Labor Code. The agreement shall specify the terms under which fees, wages, penalties, and costs, and any interest thereon, become subject to collection by the Franchise Tax Board.

The agreement may also provide for reimbursement to the Franchise Tax Board on the basis of a percentage of the amount of revenue realized as a result of the Franchise Tax Board's services, provided that the amount of any reimbursement shall not exceed the actual costs of collection, including court costs and reasonable attorney's fees. Wherever possible the collection costs shall be borne by the judgment debtor. Any fee for the recovery of wages shall not be paid by the workers. The department shall adopt rules and regulations to provide for a reasonable fee to cover actual collection costs. The Franchise Tax Board shall be entitled to court costs and reasonable attorney's fees as a judgment creditor under subdivision (i) of Section 98.2 of the Labor Code.

(b) Upon written notice to the obligor from the Franchise Tax Board, any amount referred to the Franchise Tax Board under subdivision (a) and any interest thereon, including any interest on the amount referred under subdivision (a) that accrued prior to the date of referral and any fee imposed to cover collection costs as provided under subdivision (a), shall be treated as final and due and payable to the State of California, and shall be collected from the obligor by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent personal income tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, in the manner provided for earnings withholding orders for taxes.

(c) (1) Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), and Part 11 (commencing with Section 23001) shall apply to amounts referred under this article in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that any provision is either inconsistent with this article or is not relevant to this article.

(2) Any information, information sources, or enforcement remedies and capabilities available to the agency referring the amount due described in subdivision (a), shall be available to the Franchise Tax Board to be used in conjunction with, or independent of, the information, information sources, or remedies and capabilities

available to the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), or Part 11 (commencing with Section 23001).

(d) The activities required to implement and administer this part shall not interfere with the primary mission of the Franchise Tax Board to administer Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001).

(e) For amounts referred for collection under subdivision (a), interest shall accrue at the greater of the rate applicable to the amount due being collected or the rate provided under Section 19521. When notice of the amount due includes interest and is mailed to the obligor, and the amount is paid within 15 days after the date of notice, interest shall not be imposed for the period after the date of notice.

(f) In no event shall a collection under this article be construed as a payment of income taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(g) The amendments made by the act adding this subdivision are operative for notices issued on or after January 1, 1998.

SEC. 12. Section 19503 of the Revenue and Taxation Code is amended to read:

19503. (a) The Franchise Tax Board shall prescribe all rules and regulations necessary for the enforcement of Part 10 (commencing with Section 17001), Part 10.7 (commencing with Section 21001), Part 11 (commencing with Section 23001), and this part and may prescribe the extent to which any ruling (including any judicial decision or any administrative determination other than by regulation) shall be applied without retroactive effect.

(b) (1) Except as otherwise provided in this subdivision, no regulation relating to Part 10 (commencing with Section 17001), Part 10.7 (commencing with Section 21001), Part 11 (commencing with Section 23001), or this part shall apply to any taxable or income year ending before the date on which any notice substantially describing the expected contents of any regulation is issued to the public.

(2) Paragraph (1) shall not apply to either of the following:

(A) Regulations issued within 24 months of the date of the enactment of the statutory provision to which the regulation relates.

(B) Regulations issued within 24 months of the date that temporary or final federal regulations with respect to statutory provisions to which California conforms are filed with the Federal Register.

(3) The Franchise Tax Board may provide that any regulation may take effect or apply retroactively to prevent abuse.

(4) The Franchise Tax Board may provide that any regulation may apply retroactively to correct a procedural defect in the issuance of any prior regulation.

(5) The limitation of paragraph (1) shall not apply to any regulation relating to the Franchise Tax Board's policies, practices, or procedures.

(6) The limitation of paragraph (1) may be superseded by a legislative grant of authority to the Franchise Tax Board to prescribe the effective date with respect to any regulation.

(7) The Franchise Tax Board may provide for any taxpayer to elect to apply any regulation before the dates specified in paragraph (1).

(c) The amendments made by the act adding this subdivision are operative with respect to regulations which relate to California statutory provisions enacted on or after January 1, 1998.

SEC. 13. Section 19717 of the Revenue and Taxation Code is amended to read:

19717. (a) The prevailing party may be awarded a judgment for reasonable litigation costs incurred, in the case of any civil proceeding brought by or against the State of California in a court of record of this state in connection with the determination, collection, or refund of any tax, interest, or penalty under this part.

(b) (1) A judgment for reasonable litigation costs shall not be awarded under subdivision (a) unless the court determines that the prevailing party has exhausted all administrative remedies available to that party under this part, including the filing of an appeal as provided in Section 19324. Any failure to agree to an extension of the time for the assessment of any tax shall not be taken into account for purposes of determining whether the prevailing party meets the requirements of the preceding sentence.

(2) An award under subdivision (a) shall be made only for reasonable litigation costs which are allocable to the State of California and not to any other party to the action or proceeding.

(3) No award for reasonable litigation costs may be made under subdivision (a) with respect to any portion of the civil proceeding during which the prevailing party has unreasonably protracted that proceeding.

(c) For purposes of this section:

(1) "Reasonable litigation costs" includes any of the following:

(A) Reasonable court costs.

(B) Based upon prevailing market rates for the kind or quality of services furnished, any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall

not be in excess of one hundred ten dollars ($110) per hour unless the court determines that a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate. In the case of each calendar year beginning with calendar year 1999, the Franchise Tax Board shall recompute the dollar amount referred to in the preceding sentence. That computation shall be made by increasing the amount in this clause by an amount equal to the cost-of-living adjustment determined under subdivision (h) of Section 17041. If any resulting dollar amount is not a multiple of ten dollars ($10), that dollar amount shall be rounded to the nearest multiple of ten dollars ($10).

(2) (A) "Prevailing party" means any party to any proceeding described in subdivision (a) (other than the State of California or any creditor of the taxpayer involved) that meets either of the following criteria:

(i) Has substantially prevailed with respect to the amount in controversy.

(ii) Has substantially prevailed with respect to the most significant issue or set of issues presented.

(B) (i) A party shall not be treated as the prevailing party in a proceeding to which subdivision (a) applies if the State of California establishes that its position in the proceeding was substantially justified.

(ii) For purposes of clause (i), the position of the State of California shall be presumed not to be substantially justified if the Franchise Tax Board did not follow its applicable published guidance in the administrative proceeding. This presumption may be rebutted.

(iii) For purposes of clause (ii), the term "applicable published guidance" means either of the following:

(I) A regulation, legal ruling, notice, information release, or announcement.

(II) Any chief counsel ruling or determination letter issued to the taxpayer.

(C) Any determination under this paragraph as to whether a party is a prevailing party shall be made by either of the following:

(i) The court.

(ii) An agreement of the parties.

(3) The term "civil proceeding" includes a civil action.

(d) For purposes of this section, in the case of multiple actions which could have been joined or consolidated, or a case or cases involving a return or returns of the same taxpayer (including joint returns of married individuals) which could have been joined in a single proceeding in the same court, the actions or cases shall be treated as one civil proceeding regardless of whether the joinder or consolidation actually occurs, unless the court in which the action is brought determines, in its discretion, that it would be inappropriate

to treat the actions or cases as joined or consolidated for purposes of this section.

(e) An order granting or denying an award for reasonable litigation costs under subdivision (a), in whole or in part, shall be incorporated as a part of the decision or judgment in the case and shall be subject to appeal in the same manner as the decision or judgment.

(f) For purposes of this section, "position of the State of California" includes either of the following:

(1) The position taken by the State of California in the civil proceeding.

(2) Any administrative action or inaction by the Franchise Tax Board (and all subsequent administrative action or inaction) upon which that proceeding is based.

(g) The amendments made by the act adding this subdivision are operative for costs and expenses incurred in proceedings beginning on or after January 1, 1998.

SEC. 14. Section 21013 of the Revenue and Taxation Code is amended to read:

21013. (a) (1) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to an appeal before the State Board of Equalization if all of the following conditions are met:

(A) The taxpayer files a claim for the fee and expenses with the State Board of Equalization.

(B) The State Board of Equalization, in its sole discretion, finds that the action taken by the Franchise Tax Board staff was unreasonable.

(2) For purposes of this section, fees and expenses related to an appeal before the State Board of Equalization do not include fees and expenses incurred in cases where an appeal has been filed, but resolved before the Franchise Tax Board's written statement of its position has been submitted to the State Board of Equalization.

(b) (1) To determine whether the Franchise Tax Board staff has been unreasonable, the State Board of Equalization shall consider whether the Franchise Tax Board has established that its position in the appeal was substantially justified.

(2) For purposes of paragraph (1), the position of the Franchise Tax Board shall be presumed not to be substantially justified if its staff did not follow its applicable published guidance in the appeal. This presumption may be rebutted.

(3) For purposes of paragraph (2), the term "applicable published guidance" means either of the following:

(A) A regulation, legal ruling, notice, information release, or announcement.

(B) Any chief counsel ruling or determination letter issued to a taxpayer.

(c) The amount of reimbursed fees and expenses shall be determined by the State Board of Equalization and shall be limited to the following:

(1) Fees and expenses incurred after the date of filing an appeal of a notice of action with respect to a deficiency assessment or jeopardy assessment, or denials of claims for refunds.

(2) If the State Board of Equalization finds that the Franchise Tax Board staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those which relate to the issues where the Franchise Tax Board staff was unreasonable.

(d) Any proposed determination by the State Board of Equalization pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of that determination.

(e) The amendments made by the act adding this subdivision are operative for fees and expenses related to appeals filed on or after January 1, 1998.

SEC. 15. Section 21016 of the Revenue and Taxation Code is amended to read:

21016. (a) The board shall release any levy issued pursuant to Part 10.2 (commencing with Section 18401) on any property in the event of any circumstances deemed appropriate by the board, including, but not limited to, the following:

(1) The expense of the sale process to the state exceeds the liability for which the levy is made.

(2) The Taxpayers' Rights Advocate orders the release of the levy upon his or her finding that the levy threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(3) The proceeds from the sale would not result in a reasonable reduction of the debt.

(4) The levy was issued not in accordance with administrative procedures.

(5) The taxpayer has entered into an installment payment agreement under Section 19008 to satisfy the tax liability for which the levy was made, unless that or another agreement allows for the levy.

(6) The release of the levy will facilitate the collection of the tax liability or will be in the best interest of the taxpayer and the state.

(b) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Title 9 of the Code of Civil Procedure.

(c) This section shall not apply to the seizure of any property as a result of a jeopardy assessment authorized by Article 5 (commencing with Section 19081) of Chapter 4 of Part 10.2.

(d) The amendments made by the act adding this subdivision are operative on or after January 1, 1998.

SEC. 16. Section 21019 of the Revenue and Taxation Code is amended to read:

21019. (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The lien shall not be filed or recorded if the taxpayer demonstrates to the board by substantial evidence, within 30 days after receiving the notice, that a filing or recording of a lien would be in error. The preliminary notice required by this section shall not apply to jeopardy assessments authorized by Article 5 (commencing with Section 19081) of Chapter 4 of Part 10.2.

(c) If after filing or recording the lien, the board determines that its action was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but not later than seven working days, after this determination or the receipt of the lien recording information, whichever is later. The release shall contain a statement that the lien was filed in error. If the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the appropriate party. Upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(d) The procedures described in subdivision (c) shall apply to liens that are filed or recorded in either of the following ways:

(1) Not in accordance with administrative procedures.

(2) After the taxpayer has entered into an installment payment agreement under Section 19008 to satisfy the tax liability for which the lien was filed or recorded, unless the agreement provides for the filing or recording of the lien.

(e) If after filing or recording the lien, the board determines that a release of the lien will facilitate the collection of the tax liability or will be in the best interest of the taxpayer and the state, it shall mail a release of that lien to the taxpayer and the entity recording the lien. If the lien is obstructing a lawful transaction and its release will facilitate the collection of the tax liability, or will be in the best interest of the taxpayer and the state, the board shall immediately do both of the following:

(1) Issue a release of lien to the appropriate party.

(2) Upon the request of the taxpayer, mail a copy of the release to the credit reporting companies, financial institutions, or any creditor whose name and address is provided by the taxpayer.

(f) This section shall not limit the circumstances in which the Franchise Tax Board may release a lien. The Franchise Tax Board may release a lien under any circumstances to facilitate the collection of the tax liability or, if that release is in the best interest of the taxpayer and state, and take any action associated with the release of that lien it deems appropriate.

(g) The amendments made by the act adding this subdivision are operative on or after January 1, 1998.

SEC. 17. Section 21022 is added to the Revenue and Taxation Code, to read:

21022. (a) Except as provided in subdivision (f), if any officer or employee of the board intentionally settles the determination or compromises the collection of any tax due from an attorney, certified public accountant, or tax preparer (as defined in subdivision (b) of Section 19169) representing a taxpayer, in exchange for information conveyed by the taxpayer to the attorney, certified public accountant, or tax preparer for purposes of obtaining advice concerning the taxpayer's tax liability, the taxpayer may bring a civil action for damages against the State of California in superior court. The civil action shall be the exclusive remedy for recovering damages resulting from the acts described in this subdivision.

(b) In any action brought under subdivision (a), upon the finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of five hundred thousand dollars ($500,000) or the sum of all the following:

(1) Actual, direct economic damages sustained by the plaintiff as a proximate result of the information disclosure.

(2) The costs of the action.

(c) Damages shall not include the taxpayer's liability for any civil or criminal penalties or other losses attributable to incarceration or the imposition of other criminal sanctions.

(d) Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy, and may be brought only within two years after the date the actions creating the liability would have been discovered by the exercise of reasonable care.

(e) Upon certification of the executive officer of the board, or the executive officer's delegate, that criminal charges have been filed against the taxpayer, the court before which an action under this section is pending shall stay all proceedings with respect to the action, pending the resolution of those criminal charges. Certification authorized by this subdivision shall comply with the requirements of Section 19542.

(f) Subdivision (a) shall not apply to information conveyed to an attorney, certified public accountant, or tax preparer for the purpose of perpetrating a fraud or crime.

(g) This section is operative for actions filed on or after January 1, 1998.

SEC. 18. Section 21023 is added to the Revenue and Taxation Code, to read:

21023. (a) Notwithstanding Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2, if any amount with respect to a joint return is due and payable and the individuals filing the return are no longer married or no longer reside in the same household, the board shall, upon request in writing by either of these individuals, disclose in writing to the requesting individual whether the board has attempted to collect the amount due from the other individual, the general nature of the collection activities, and the amount collected.

(b) This section is operative for requests made on or after January 1, 1998.

SEC. 19. Section 21024 is added to the Revenue and Taxation Code, to read:

21024. For appeals filed under Section 19045 or 19324, on or after January 1, 1998, the board shall have the burden of producing reasonable and probative information, in addition to the information described in subdivision (a), concerning the amount assessed if a taxpayer does both of the following:

(a) Asserts a reasonable dispute with respect to either of the following:

(1) An item of income reported on an information return filed with the board pursuant to Section 18637, 18638, 18639, 18640, 18641, 18642, 18643, 18644, 18645, 18646, or 18647 by a third party.

(2) Wage information reported or furnished to the Employment Development Department and accessible to the board under subdivision (g) of Section 1088 of, or subdivision (e) of Section 13050 of, the Unemployment Insurance Code or an exchange of information agreement.

(b) Fully cooperates with the board, including, but not limited to, providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer as reasonably requested by the board.

SEC. 20. Section 20125 is added to the Revenue and Taxation Code, to read:

20125. If any payment is received on or after January 1, 1998, by the board from any taxpayer and the board cannot associate the payment with the taxpayer, the board shall make reasonable efforts to notify the taxpayer of the inability within 60 days after the receipt of the payment.

SEC. 21. Section 21026 is added to the Revenue and Taxation Code, to read:

21026. (a) Except as otherwise provided in subdivision (b), for income or taxable years beginning on or after January 1, 1998, the board shall, not less than annually, mail a written notice to each taxpayer who has a tax delinquent account of the amount of the tax delinquency as of the date of the notice.

(b) Subdivision (a) shall not apply to accounts where a previously mailed notice to the address of record was returned to the board as undeliverable, or to accounts that are discharged from accountability pursuant to Chapter 3 (commencing with Section 13940) of Part 4 of Division 3 of Title 2 of the Government Code.

SEC. 22. Section 21027 is added to the Revenue and Taxation Code, to read:

21027. (a) For purposes of Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part or any other law that is applicable to the mailing of any returns, payments, or any other items required to be filed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part, any reference in Section 11003 of the Government Code to the United States mail shall be treated as including a reference to any designated delivery service, and any reference in that section to a post office cancellation mark shall be treated as including a reference to any date recorded electronically by a designated delivery service, kept in the regular course of the designated delivery service's business, or marks on the cover in which any item is to be delivered to the board that indicate the date on which the item was given to the designated delivery service for delivery.

(b) For purposes of this section, "designated delivery service" means any delivery service provided by a trade or business if that service is designated by the Secretary of the Treasury under the authority of Section 7502(f) of the Internal Revenue Code, as amended by Public Law 104-168.

(c) This section is operative for items given to designated delivery services on or after January 1, 1998.

SEC. 23. Section 1 of this act is operative for taxable years beginning on or after January 1, 1997.

CHAPTER 601

An act to amend Section 102425 of the Health and Safety Code, to amend Section 19272 of, and to amend and renumber Section 19532 of, the Revenue and Taxation Code, and to amend Section 11475.1 of the Welfare and Institutions Code, relating to support.

[Approved by Governor October 1, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Section 102425 of the Health and Safety Code is amended to read:

102425. (a) The certificate of live birth for any live birth occurring on or after January 1, 1980, shall contain those items

necessary to establish the fact of the birth and shall contain only the following information:

(1) Full name and sex of child.

(2) Date of birth, including month, day, hour, and year.

(3) Planned place of birth and place of birth.

(4) Full name of the father, birthplace, and date of birth of the father including month, day, and year. If the parents are not married to each other, the father's name shall not be listed on the birth certificate unless the father and the mother sign a voluntary declaration of paternity at the hospital before the birth certificate is prepared. The birth certificate may be amended to add the father's name at a later date only if paternity for the child has been established by a judgment of a court of competent jurisdiction or by the filing of a voluntary declaration of paternity.

(5) Full birth name of the mother, birthplace, and date of birth of the mother including month, day, and year.

(6) Multiple births and birth order of multiple births.

(7) Signature, and relationship to child, of a parent or other informant, and date signed.

(8) Name, title, and mailing address of attending physician and surgeon or principal attendant, signature, and certification of live birth by attending physician and surgeon or principal attendant or certifier, date signed, and name and title of certifier if other than attending physician and surgeon or principal attendant.

(9) Date accepted for registration and signature of local registrar.

(10) A state birth certificate number and local registration district and number.

(11) A blank space for entry of date of death with a caption reading "Date of Death."

(b) In addition to the items listed in subdivision (a), the certificate of live birth shall contain the following medical and social information, provided that the information is kept confidential pursuant to Sections 102430 and 102447 and is clearly labeled "Confidential Information for Public Health Use Only:"

(1) Birth weight.

(2) Pregnancy history.

(3) Race and ethnicity of the mother and father.

(4) Residence address of the mother.

(5) A blank space for entry of census tract for the mother's address.

(6) Month prenatal care began and number of prenatal visits.

(7) Date of last normal menses.

(8) Description of complications of pregnancy and concurrent illnesses, congenital malformation, and any complication of labor and delivery, including surgery; provided that this information is essential medical information and appears in total on the face of the certificate.

(9) Mother's and father's occupations and kind of business or industry.

(10) Education level of mother and father.

(11) Principal source of pay for prenatal care, which shall include all of the following: Medi-Cal, health maintenance organization or prepaid health plan, private insurance companies, medically indigent, self-pay, other sources which shall include, Medicare, workers' compensation, Title V, other government or nongovernment programs, no charge, and other categories as determined by the State Department of Health Services.

This paragraph shall become inoperative on January 1, 1999, or on the implementation date of the decennial birth certificate revision due to occur on or about January 1, 1999, whichever occurs first.

(12) Expected principal source of pay for delivery, which shall include all of the following: Medi-Cal, health maintenance organization or prepaid health plan, private insurance companies, medically indigent, self-pay, other sources which shall include, Medicare, workers' compensation, Title V, other government or nongovernment programs, no charge, and other categories as determined by the State Department of Health Services.

This paragraph shall become inoperative on January 1, 1999, or on the implementation date of the decennial birth certificate revision due to occur on or about January 1, 1999, whichever occurs first.

(13) An indication of whether or not the child's parent desires the automatic issuance of a Social Security number to the child.

(14) On and after January 1, 1995, the Social Security numbers of the mother and father, unless subdivision (b) of Section 102150 applies.

(c) Item 8, specified in subdivision (b), shall be completed by the attending physician and surgeon or the attending physician's and surgeon's designated representative. The names and addresses of children born with congenital malformations, who require followup treatment, as determined by the child's physician and surgeon, shall be furnished by the physician and surgeon to the local health officer, if permission is granted by either parent of the child.

(d) The parent shall only be asked to sign the form after both the public portion and the confidential medical and social information items have been entered upon the certificate of live birth.

(e) The State Registrar shall instruct all local registrars to collect the information specified in this section with respect to certificates of live birth. The information shall be transcribed on the certificate of live birth in use at the time and shall be limited to the information specified in this section.

Information relating to concurrent illnesses, complications of pregnancy and delivery, and congenital malformations shall be completed by the physician and surgeon, or physician's and surgeon's designee, inserting in the space provided on the confidential portion of the certificate the appropriate number or numbers listed on the

VS-10A supplemental worksheet. The VS-10A supplemental form shall be used as a worksheet only and shall not in any manner be linked with the identity of the child or the mother, nor submitted with the certificate to the State Registrar. All information transferred from the worksheet to the certificate shall be fully explained to the parent or other informant prior to the signing of the certificate. No questions relating to drug or alcohol abuse may be asked.

(f) If the implementation date of the decennial birth certificate revision occurs prior to January 1, 1999, within 30 days of this implementation date the State Department of Health Services shall file a letter with the Secretary of the Senate and with the Chief Clerk of the Assembly, so certifying.

SEC. 2. Section 19272 of the Revenue and Taxation Code is amended to read:

19272. (a) Any child support delinquency collected by the Franchise Tax Board, including those amounts that result in overpayment of a child support delinquency, shall be deposited in the State Treasury, after clearance of the remittance, to the credit of the Special Deposit Fund and distributed as specified by interagency agreement executed by the Franchise Tax Board and the State Department of Social Services, with the concurrence of the Controller. Notwithstanding Section 13340 of the Government Code, all moneys deposited in the Special Deposit Fund pursuant to this article are hereby continuously appropriated, without regard to fiscal years, for purposes of making distributions.

(b) When a child support delinquency, or any portion thereof, has been collected by the Franchise Tax Board pursuant to this article, the district attorney shall be notified that the delinquency or some portion thereof has been collected and shall be provided any other necessary relevant information requested.

(c) The referring county district attorney shall receive credit for the amount of collections made pursuant to the referral, and shall receive the applicable child support enforcement incentives pursuant to Section 15200.85 of the Welfare and Institutions Code. Collection costs incurred by the Franchise Tax Board shall be paid by federal reimbursement with any balance to be paid from the General Fund.

SEC. 3. Section 19532 of the Revenue and Taxation Code, as amended by Chapter 1001 of the Statutes of 1996, is amended and renumbered to read:

19533. In the event the debtor has more than one debt being collected by the Franchise Tax Board and the amount collected by the Franchise Tax Board is insufficient to satisfy the total amount owing, the amount collected shall be applied in the following priority:

(a) Payment of any taxes, additions to tax, penalties, interest, fees, or other amounts due and payable under Part 7.5 (commencing with Section 13201), Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(b) Payment of any debts referred for collection under Article 5 (commencing with Section 19271) of Chapter 5.

(c) Payment of delinquent wages collected pursuant to the Labor Code.

(d) Payment of delinquencies collected under Section 10878.

(e) Payment of any amounts due that are referred for collection under Article 6 (commencing with Section 19280) of Chapter 5.

(f) Payment of any amounts that are referred for collection pursuant to Section 62.9 of the Labor Code.

(g) Payment of delinquent penalties collected for the Department of Industrial Relations pursuant to the Labor Code.

(h) Payment of delinquent fees collected for the Department of Industrial Relations pursuant to the Labor Code.

(i) Payment of delinquencies referred by the Student Aid Commission pursuant to Section 16583.5 of the Government Code.

(j) Notwithstanding the payment priority established by this section, voluntary payments made by an obligated parent for a child support obligation pursuant to subparagraph (B) of paragraph (1) of subdivision (b) of Section 19271 shall not be applied pursuant to this priority but shall instead be applied solely to the child support obligation for which the voluntary payment was made.

SEC. 4. Section 11475.1 of the Welfare and Institutions Code is amended to read:

11475.1. (a) Each county shall maintain a single organizational unit located in the office of the district attorney which shall have the responsibility for promptly and effectively establishing, modifying, and enforcing child support obligations, including medical support, enforcing spousal support orders established by a court of competent jurisdiction, and determining paternity in the case of a child born out of wedlock. The district attorney shall take appropriate action, both civil and criminal, to establish, modify, and enforce child support and, when appropriate, enforce spousal support orders when the child is receiving public assistance, including Medi-Cal, and, when appropriate, may take the same actions on behalf of a child who is not receiving public assistance, including Medi-Cal. The district attorney shall refer all child support delinquencies to the Franchise Tax Board pursuant to Section 19271 of the Revenue and Taxation Code.

(b) Actions brought by the district attorney to establish paternity or child support or to enforce child support obligations shall be completed within the time limits set forth by federal law. The district attorney's responsibility applies to spousal support only where the spousal support obligation has been reduced to an order of a court of competent jurisdiction. In any action brought for modification or revocation of an order that is being enforced under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.), the effective date of the modification or revocation shall be as prescribed by federal law (42 U.S.C. Sec. 666(a)(9)), or any subsequent date.

(c) (1) The Judicial Council, in consultation with the department and representatives of the California Family Support Council, the Senate Committee on Judiciary, the Assembly Committee on Judiciary, and a legal services organization providing representation on child support matters, shall develop simplified summons, complaint, and answer forms for any action for support brought pursuant to this section or Section 11350.1. The Judicial Council may combine the summons and complaint in a single form.

(2) The simplified complaint form shall provide the defendant with notice of the amount of child support that is sought pursuant to the guidelines set forth in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of the Family Code based upon the income or income history of the defendant as known to the district attorney. If the defendant's income or income history is unknown to the district attorney, the complaint shall inform the defendant that income shall be presumed in an amount that results in a court order equal to the minimum basic standard of adequate care provided in Section 11452 unless information concerning the defendant's income is provided to the court. The complaint form shall be accompanied by a proposed judgment. The complaint form shall include a notice to the defendant that the proposed judgment will become effective if he or she fails to file an answer with the court within 30 days of service.

(3) (A) The simplified answer form shall be written in simple English and shall permit a defendant to answer and raise defenses by checking applicable boxes. The answer form shall include instructions for completion of the form and instructions for proper filing of the answer.

(B) The answer form shall be accompanied by a blank income and expense declaration or simplified financial statement and instructions on how to complete the financial forms. The answer form shall direct the defendant to file the completed income and expense declaration or simplified financial statement with the answer, but shall state that the answer will be accepted by a court without the income and expense declaration or simplified financial statement.

(C) The clerk of the court shall accept and file answers, income and expense declarations, and simplified financial statements that are completed by hand provided they are legible.

(4) (A) The simplified complaint form prepared pursuant to this subdivision shall be used by the district attorney or the Attorney General in all cases brought under this section or Section 11350.1.

(B) The simplified answer form prepared pursuant to this subdivision shall be served on all defendants with the simplified complaint. Failure to serve the simplified answer form on all defendants shall not invalidate any judgment obtained. However, failure to serve the answer form may be used as evidence in any proceeding under Section 11356 of this code or Section 473 of the Code of Civil Procedure.

(C) The Judicial Council shall add language to the governmental summons, for use by the district attorney with the governmental complaint to establish parental relationship and child support, informing defendants that a blank answer form should have been received with the summons and additional copies may be obtained from either the district attorney's office or the superior court clerk.

(d) In any action brought or enforcement proceedings instituted by the district attorney pursuant to this section for payment of child or spousal support, an action to recover an arrearage in support payments may be maintained by the district attorney at any time within the period otherwise specified for the enforcement of a support judgment, notwithstanding the fact that the child has attained the age of majority.

(e) The county shall undertake an outreach program to inform the public that the services described in subdivisions (a) to (c), inclusive, are available to persons not receiving public assistance. There shall be prominently displayed in every public area of every office of the units established by this section a notice, in clear and simple language prescribed by the Director of Social Services, that the services provided in subdivisions (a) to (c), inclusive, are provided to all individuals whether or not they are recipients of public social services.

(f) In any action to establish a child support order brought by the district attorney in the performance of duties under this section, the district attorney may make a motion for an order effective during the pendency of that action, for the support, maintenance, and education of the child or children that are the subject of the action. This order shall be referred to as an order for temporary support. This order shall have the same force and effect as a like or similar order under the Family Code.

The district attorney shall file a motion for an order for temporary support within the following time limits:

(1) If the defendant is the mother, a presumed father under Section 7611 of the Family Code, or any father where the child is at least six months old when the defendant files his answer, the time limit is 90 days after the defendant files an answer.

(2) In any other case where the defendant has filed an answer prior to the birth of the child or not more than six months after the birth of the child, then the time limit is nine months after the birth of the child.

If more than one child is the subject of the action, the limitation on reimbursement shall apply only as to those children whose parental relationship and age would bar recovery were a separate action brought for support of that child or those children.

If the district attorney fails to file a motion for an order for temporary support within time limits specified in this section, the district attorney shall be barred from obtaining a judgment of reimbursement for any support provided for that child during the

period between the date the time limit expired and the motion was filed, or, if no such motion is filed, when a final judgment is entered.

Nothing in this section prohibits the district attorney from entering into cooperative arrangements with other county departments as necessary to carry out the responsibilities imposed by this section pursuant to plans of cooperation with the departments approved by the State Department of Social Services.

Nothing in this section shall otherwise limit the ability of the district attorney from securing and enforcing orders for support of a spouse or former spouse as authorized under any other provision of law.

(g) As used in this article, "enforcing obligations" includes, but is not limited to, (1) the use of all interception and notification systems operated by the State Department of Social Services for the purposes of aiding in the enforcement of support obligations, (2) the obtaining by the district attorney of an initial order for child support, which may include medical support or which is for medical support only, by civil or criminal process, (3) the initiation of a motion or order to show cause to increase an existing child support order, and the response to a motion or order to show cause brought by an obligor parent to decrease an existing child support order, or the initiation of a motion or order to show cause to obtain an order for medical support, and the response to a motion or order to show cause brought by an obligor parent to decrease or terminate an existing medical support order, without regard to whether the child is receiving public assistance, (4) the response to a notice of motion or order to show cause brought by an obligor parent to decrease an existing spousal support order when the child or children are residing with the obligee parent and the district attorney is also enforcing a related child support obligation owed to the obligee parent by the same obligor, and (5) the use of the collection services of the Franchise Tax Board to enforce the collection of child support delinquencies under Section 19271 of the Revenue and Taxation Code.

(h) As used in this section, "out of wedlock" means that the biological parents of the child were not married to each other at the time of the child's conception.

(i) The district attorney is the public agency responsible for administering wage withholding for the purposes of Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.). Notwithstanding any other law, the district attorney shall utilize the collection services of the Franchise Tax Board under Section 19271 of the Revenue and Taxation Code.

Nothing in this section shall limit the authority of the district attorney granted by other sections of this code or otherwise granted by law, except to the extent that the law is inconsistent with the requirement to refer child support delinquencies to the Franchise Tax Board for collection pursuant to Section 19271 of the Revenue and Taxation Code.

(j) In the exercise of the authority granted under this article, the district attorney may intervene, pursuant to subdivision (b) of Section 387 of the Code of Civil Procedure, by ex parte application, in any action under the Family Code, or other proceeding wherein child support is an issue or a reduction in spousal support is sought. By notice of motion, order to show cause, or responsive pleading served upon all parties to the action, the district attorney may request such relief as appropriate which the district attorney is authorized to seek.

(k) The district attorney shall comply with any guidelines established by the State Department of Social Services which set time standards for responding to requests for assistance in locating absent parents, establishing paternity, establishing child support awards, and collecting child support payments.

(*l*) As used in this article, medical support activities which the district attorney is authorized to perform are limited to the following:

(1) The obtaining and enforcing of court orders for health insurance coverage.

(2) Any other medical support activity mandated by federal law or regulation.

(m) (1) Notwithstanding any other provision of law, venue for an action or proceeding under this part shall be determined as follows:

(A) Venue shall be in the superior court in the county that is currently expending public assistance.

(B) If public assistance is not currently being expended, venue shall be in the superior court in the county where the child who is entitled to current support resides or is domiciled.

(C) If current support is no longer payable through, or enforceable by, the district attorney, venue shall be in the superior court in the county that last provided public assistance for actions to enforce arrearages assigned pursuant to Section 11477.

(D) If subparagraphs (A), (B), and (C) do not apply, venue shall be in the superior court in the county of residence of the support obligee.

(E) If the support obligee does not reside in California, and subparagraphs (A), (B), (C), and (D) do not apply, venue shall be in the superior court of the county of residence of the obligor.

(2) Notwithstanding paragraph (1), if the child becomes a resident of another county after an action under this part has been filed, venue may remain in the county where the action was filed until the action is completed.

(n) The district attorney of one county may appear on behalf of the district attorney of any other county in an action or proceeding under this part.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act provides for offsetting savings to local agencies or school districts

that result in no net costs to the local agencies or school districts, within the meaning of Section 17556 of the Government Code.

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

SEC. 6. This act shall become operative only if Assembly Bill 573 and Assembly Bill 1395, both of the 1997–98 Regular Session, are enacted and become effective on or before January 1, 1998.

CHAPTER 602

An act to add Chapter 12.93 (commencing with Section 7097) to Division 7 of Title 1 of the Government Code, and to amend Sections 17039, 17276.2, 23036, and 24416.2 of, and to add Sections 17053.33, 17053.34, 17267.6, 23633, 23634, and 24356.6 to, the Revenue and Taxation Code, relating to economic development.

[Approved by Governor October 1, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Chapter 12.93 (commencing with Section 7097) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 12.93. TARGETED TAX AREAS

7097. (a) The Trade and Commerce Agency shall rank applicant communities and shall designate the first ranking community whose governing body is applying as a community to be designated as a targeted tax area which meets at least four of the five following criteria:

(1) The average unemployment rate in the applicant community exceeded 7.5 percent in 1995.

(2) The average unemployment rate in the applicant community exceeded 7.5 percent in 1996.

(3) The median family income in the applicant community does not exceed thirty-two thousand seven hundred dollars ($32,700).

(4) The percentage of persons in the applicant community below the poverty level is at least 17.5 percent.

(5) The applicant community ranks in the top quartile, among California counties, in the percentage of population receiving Aid for Families with Dependent Children benefits, based on the Cash Grant Caseload Movement and Expenditures Report, July 1995 to June 1996.

(b) For purposes of applying any provision of the Revenue and Taxation Code, any targeted tax area designated pursuant to this section shall not be considered an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070).

(c) Except as provided in subdivision (e), the designation as a targeted tax area pursuant to this section shall be binding for a period of 15 years, commencing January 1, 1998.

(d) Only one targeted tax area shall be designated by the agency, and a renewed or replacement designation shall not be made after the initial designation expires or is revoked.

(e) An audit of the program's operation shall be made by the Trade and Commerce Agency on a periodic basis with the cooperation of the local governing board. If the agency determines that the local jurisdiction is not complying with the terms of the memorandum of understanding, the agency shall provide written notice of the program deficiencies and the governing body shall be given six months to correct the deficiencies. If the deficiencies are not corrected, the designation shall be revoked.

(f) A county and any cities within the county may apply jointly as a community if the combination of the jurisdictions meets the criteria.

SEC. 2. Section 17039 of the Revenue and Taxation Code is amended to read:

17039. (a) Notwithstanding any provision in this part to the contrary, for the purposes of computing tax credits, the term "net tax" means the tax imposed under either Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to lump-sum distributions) less the credits allowed by Section 17054 (relating to personal exemption credits) and any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560. Notwithstanding the preceding sentence, the "net tax" shall not be less than the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions), if any. Credits shall be allowed against "net tax" in the following order:

(1) Credits that do not contain carryover or refundable provisions, except those described in paragraphs (4) and (5).

(2) Credits that contain carryover provisions but do not contain refundable provisions.

(3) Credits that contain both carryover and refundable provisions.

(4) The minimum tax credit allowed by Section 17063 (relating to the alternative minimum tax).

(5) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(6) Credits that contain refundable provisions but do not contain carryover provisions.

The order within each paragraph shall be determined by the Franchise Tax Board.

(b) Notwithstanding the provisions of Sections 17053.5 (relating to the renter's credit), 17061 (relating to refunds pursuant to the Unemployment Insurance Code), and 19002 (relating to tax withholding), the credits provided in those sections shall be allowed in the order provided in paragraph (6) of subdivision (a).

(c) (1) Notwithstanding any other provision of this part, no tax credit shall reduce the tax imposed under Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions) below the tentative minimum tax, as defined by Section 17062, except the following credits, but only after allowance of the credit allowed by Section 17063:

(A) The credit allowed by former Section 17052.4 (relating to solar energy).

(B) The credit allowed by former Section 17052.5 (relating to solar energy).

(C) The credit allowed by Section 17052.5 (relating to solar energy).

(D) The credit allowed by Section 17052.12 (relating to research expenses).

(E) The credit allowed by former Section 17052.13 (relating to sales and use tax credit).

(F) The credit allowed by Section 17052.15 (relating to Los Angeles Revitalization Zone sales tax credit).

(G) The credit allowed by Section 17053.5 (relating to the renter's credit).

(H) The credit allowed by former Section 17053.8 (relating to enterprise zone hiring credit).

(I) The credit allowed by Section 17053.10 (relating to Los Angeles Revitalization Zone hiring credit).

(J) The credit allowed by former Section 17053.11 (relating to program area hiring credit).

(K) For each taxable year beginning on or after January 1, 1994, the credit allowed by Section 17053.17 (relating to Los Angeles Revitalization Zone hiring credit).

(L) The credit allowed by Section 17053.33 (relating to targeted tax area sales or use tax credit).

(M) The credit allowed by Section 17053.34 (relating to targeted tax area hiring credit).

(N) The credit allowed by Section 17053.49 (relating to qualified property).

(O) The credit allowed by Section 17053.70 (relating to enterprise zone sales or use tax credit).

(P) The credit allowed by Section 17053.74 (relating to enterprise zone hiring credit).

(Q) The credit allowed by Section 17057 (relating to clinical testing expenses).

(R) The credit allowed by Section 17058 (relating to low-income housing).

(S) The credit allowed by Section 17061 (relating to refunds pursuant to the Unemployment Insurance Code).

(T) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(U) The credit allowed by Section 19002 (relating to tax withholding).

(2) Any credit that is partially or totally denied under paragraph (1) shall be allowed to be carried over and applied to the net tax in succeeding taxable years, if the provisions relating to that credit include a provision to allow a carryover when that credit exceeds the net tax.

(d) Unless otherwise provided, any remaining carryover of a credit allowed by a section that has been repealed or made inoperative shall continue to be allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(e) (1) Unless otherwise provided, if two or more taxpayers (other than husband and wife) share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to his or her respective share of the costs paid or incurred.

(2) In the case of a partnership, the credit shall be allocated among the partners pursuant to a written partnership agreement in accordance with Section 704 of the Internal Revenue Code, relating to partner's distributive share.

(3) In the case of a husband and wife who file separate returns, the credit may be taken by either or equally divided between them.

(f) Unless otherwise provided, in the case of a partnership, any credit allowed by this part shall be computed at the partnership level, and any limitation on the expenses qualifying for the credit or limitation upon the amount of the credit shall be applied to the partnership and to each partner.

SEC. 3. Section 17053.33 is added to the Revenue and Taxation Code, to read:

17053.33. (a) For each taxable year beginning on or after January 1, 1998, there shall be allowed as a credit against the "net tax" (as defined in Section 17039) for the taxable year an amount equal to the sales or use tax paid or incurred during the taxable year by the qualified taxpayer in connection with the qualified taxpayer's purchase of qualified property.

(b) For purposes of this section:

(1) "Qualified property" means property that meets all of the following requirements:

(A) Is any of the following:

(i) Machinery and machinery parts used for fabricating, processing, assembling, and manufacturing.

(ii) Machinery and machinery parts used for the production of renewable energy resources.

(iii) Machinery and machinery parts used for either of the following:

(I) Air pollution control mechanisms.

(II) Water pollution control mechanisms.

(iv) Data processing and communications equipment, such as computers, computer-automated drafting systems, copy machines, telephone systems, and faxes.

(v) Motion picture manufacturing equipment central to production and post production, such as cameras, audio recorders, and digital image and sound processing equipment.

(B) The total cost of qualified property purchased and placed in service in any taxable year that may be taken into account by any qualified taxpayer for purposes of claiming this credit shall not exceed one million dollars ($1,000,000).

(C) The qualified property is used by the qualified taxpayer exclusively in a targeted tax area.

(D) The qualified property is purchased and placed in service before the date the targeted tax area designation expires, is revoked, is no longer binding, or becomes inoperative.

(2) (A) "Qualified taxpayer" means a person or entity that meets both of the following:

(i) Is engaged in a trade or business within a targeted tax area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(ii) Is engaged in those lines of business described in Codes 2000 to 2099, inclusive; 2200 to 3999, inclusive; 4200 to 4299, inclusive; 4500 to 4599, inclusive; and 4700 to 5199, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(B) In the case of any pass-through entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section or Section 23633 shall be allowed to the pass-through entity and passed through to the partners or shareholders in accordance with applicable provisions of this part or Part 11 (commencing with Section 23001). For purposes of this subparagraph, the term "pass-through entity" means any partnership or S corporation.

(3) "Targeted tax area" means the area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(c) If the qualified taxpayer is allowed a credit for qualified property pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to that qualified property.

(d) If the qualified taxpayer has purchased property upon which a use tax has been paid or incurred, the credit provided by this section shall be allowed only if qualified property of a comparable quality and price is not timely available for purchase in this state.

(e) In the case where the credit otherwise allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit that exceeds the "net tax" may be carried over and added to the credit, if any, in the following year, and succeeding years if necessary, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(f) Any qualified taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the qualified property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the qualified taxpayer's purchase of qualified property.

(g) (1) The amount of the credit otherwise allowed under this section and Section 17053.34, including any credit carryover from prior years, that may reduce the "net tax" for the taxable year shall not exceed the amount of tax that would be imposed on the qualified taxpayer's business income attributable to the targeted tax area determined as if that attributable income represented all of the income of the qualified taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section as follows:

(A) Business income shall be apportioned to the targeted tax area by multiplying the total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) "The targeted tax area" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (e).

(4) In the event that a credit carryover is allowable under subdivision (e) for any taxable year after the targeted tax area designation has expired, has been revoked, is no longer binding, or has become inoperative, the targeted tax area shall be deemed to remain in existence for purposes of computing the limitation specified in this subdivision.

SEC. 4. Section 17053.34 is added to the Revenue and Taxation Code, to read:

17053.34. (a) For each taxable year beginning on or after January 1, 1998, there shall be allowed a credit against the "net tax" (as defined in Section 17039) to a qualified taxpayer who employes a qualified employee in a targeted tax area during the taxable year. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) That portion of wages paid or incurred by the qualified taxpayer during the taxable year to qualified employees that does not exceed 150 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the day the employee commences employment with the qualified taxpayer.

(C) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the targeted tax area expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the qualified taxpayer within the targeted tax area within the 60-month period prior to the targeted tax area expiration date shall continue to qualify for the credit under this section after the targeted tax area expiration date, in accordance with all provisions of this section applied as if the targeted tax area designation were still in existence and binding.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Targeted tax area expiration date" means the date the targeted tax area designation expires, is revoked, is no longer binding, or becomes inoperative.

(4) (A) "Qualified employee" means an individual who meets all of the following requirements:

(i) At least 90 percent of his or her services for the qualified taxpayer during the taxable year are directly related to the conduct of the qualified taxpayer's trade or business located in a targeted tax area.

(ii) Performs at least 50 percent of his or her services for the qualified taxpayer during the taxable year in a targeted tax area.

(iii) Is hired by the qualified taxpayer after the date of original designation of the area in which services were performed as a targeted tax area.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training,

or services funded by the federal Job Training Partnership Act, or its successor.

(II) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, or its successor.

(III) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was an economically disadvantaged individual 14 years of age or older.

(IV) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a dislocated worker who meets any of the following:

(aa) Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

(bb) Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of the closure or layoff.

(cc) Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

(dd) Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

(ee) Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

(ff) Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

(gg) Is a seasonal or migrant worker who experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

(hh) Has been terminated or laid off, or has received a notice of termination or layoff, as a consequence of compliance with the Clean Air Act.

(V) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a disabled individual who is eligible for or enrolled in, or has completed

a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(VI) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was an ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilty.

(VII) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a person eligible for or a recipient of any of the following:

(aa) Federal Supplemental Security Income benefits.

(bb) Aid to Families with Dependent Children.

(cc) Food stamps.

(dd) State and local general assistance.

(VIII) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(IX) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a resident of a targeted tax area.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible under the federal Targeted Jobs Tax Credit Program.

(5) (A) "Qualified taxpayer" means a person or entity that meets both of the following:

(i) Is engaged in a trade or business within a targeted tax area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(ii) Is engaged in those lines of business described in Codes 2000 to 2099, inclusive; 2200 to 3999, inclusive; 4200 to 4299, inclusive; 4500 to 4599, inclusive; and 4700 to 5199, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(B) In the case of any pass-through entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section or Section 23634 shall be allowed to the pass-through entity and passed through to the partners or shareholders in accordance with applicable provisions of this part or Part 11 (commencing with Section 23001). For purposes of this subdivision, the term "pass-through entity" means any partnership or S corporation.

(c) If the qualified taxpayer is allowed a credit for qualified wages pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to those qualified wages.

(d) The qualified taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department, as permitted by federal law, or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification that provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The Employment Development Department may provide preliminary screening and referral to a certifying agency. The Employment Development Department shall develop a form for this purpose.

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(e) (1) For purposes of this section:

(A) All employees of trades or businesses, which are not incorporated, that are under common control shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit, and shall be allocated in that manner.

(C) Principles that apply in the case of controlled groups of corporations, as specified in subdivision (d) of Section 23634, shall apply with respect to determining employment.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (f)) for any calendar year ending after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(f) (1) If the employment of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the qualified taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the qualified taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the qualified taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in paragraph (1), becomes

disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the qualified taxpayer fails to offer reemployment to that employee.

(iii) A termination of employment of a qualified employee, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the qualified taxpayer.

(v) A termination of employment of a qualified employee, if that employee is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the qualified taxpayer and a qualified employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the qualified taxpayer, if the qualified employee continues to be employed in that trade or business and the qualified taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(g) In the case of an estate or trust, both of the following apply:

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated, for purposes of this part, as the employer with respect to those wages.

(h) For purposes of this section, "targeted tax area" means an area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(i) In the case where the credit otherwise allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit that exceeds the "net tax" may be carried over and added to the credit, if any, in succeeding taxable years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 17053.33, including any credit carryover from prior years, that may reduce the "net tax" for the taxable year shall not exceed the amount of tax that would be imposed on the qualified taxpayer's business income attributable to the targeted tax area determined as if that attributable income represented all of the income of the qualified taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section as follows:

(A) Business income shall be apportioned to the targeted tax area by multiplying the total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) "The targeted tax area" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (h).

(4) In the event that a credit carryover is allowable under subdivision (h) for any taxable year after the targeted tax area expiration date, the targeted tax area shall be deemed to remain in existence for purposes of computing the limitation specified in this subdivision.

SEC. 5. Section 17267.6 is added to the Revenue and Taxation Code, to read:

17267.6. (a) For each taxable year beginning on or after January 1, 1998, a qualified taxpayer may elect to treat 40 percent of the cost of any Section 17267.6 property as an expense that is not chargeable to a capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the qualified taxpayer places the Section 17267.6 property in service.

(b) In the case of a husband and wife filing separate returns for a taxable year, the applicable amount under subdivision (a) shall be equal to 50 percent of the percentage specified in subdivision (a).

(c) (1) An election under this section for any taxable year shall do both of the following:

(A) Specify the items of Section 17267.6 property to which the election applies and the percentage of the cost of each of those items that are to be taken into account under subdivision (a).

(B) Be made on the qualified taxpayer's original return of the tax imposed by this part for the taxable year.

(2) Any election made under this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(d) (1) For purposes of this section, "Section 17267.6 property" means any recovery property that is:

(A) Section 1245 property (as defined in Section 1245(a)(3) of the Internal Revenue Code).

(B) Purchased and placed in service by the qualified taxpayer for exclusive use in a trade or business conducted within a targeted tax area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(C) Purchased and placed in service before the date the targeted tax area designation expires, is revoked, is no longer binding, or becomes inoperative.

(2) For purposes of paragraph (1), "purchase" means any acquisition of property, but only if both of the following apply:

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under Section 267 or Section 707(b) of the Internal Revenue Code. However, in applying Sections 267(b) and 267(c) for purposes of this section, Section 267(c)(4) shall be treated as providing that the family of an individual shall include only the individual's spouse, ancestors, and lineal descendants.

(B) The basis of the property in the hands of the person acquiring it is not determined in whole or in part by reference to the adjusted basis of that property in the hands of the person from whom it is acquired.

(3) For purposes of this section, the cost of property does not include that portion of the basis of the property that is determined by reference to the basis of other property held at any time by the person acquiring the property.

(4) This section shall not apply to estates and trusts.

(5) This section shall not apply to any property for which the qualified taxpayer may not make an election for the taxable year under Section 179 of the Internal Revenue Code because of the application of the provisions of Section 179(d) of the Internal Revenue Code.

(6) In the case of a partnership, the percentage limitation specified in subdivision (a) shall apply at the partnership level and at the partner level.

(e) (1) For purposes of this section, "qualified taxpayer" means a person or entity that meets both of the following:

(A) Is engaged in a trade or business within a targeted tax area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(B) Is engaged in those lines of business described in Codes 2000 to 2099, inclusive; 2200 to 3999, inclusive; 4200 to 4299, inclusive; 4500 to 4599, inclusive, and 4700 to 5199, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United State Office of Management and Budget, 1987 edition.

(2) In the case of any pass-through entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any deduction under this section or Section 24356.6 shall be allowed to the pass-through entity and passed through to the partners or shareholders in accordance with applicable provisions of this part of Part 11 (commencing with Section 23001). For purposes of this subparagraph, the term "pass-through entity" means any partnership or S corporation.

(f) Any qualified taxpayer who elects to be subject to this section shall not be entitled to claim for the same property, the deduction under Section 179 of the Internal Revenue Code, relating to an election to expense certain depreciable business assets. However, the qualified taxpayer may claim depreciation by any method permitted by Section 168 of the Internal Revenue Code, commencing with the taxable year following the taxable year in which the Section 17267.6 property is placed in service.

(g) The aggregate cost of all Section 17267.6 property that may be taken into account under subdivision (a) for any taxable year shall not exceed the following applicable amount for the taxable year of the designation of the relevant targeted tax area and taxable years thereafter:

	The applicable amount is:
Taxable year of designation	$100,000
1st taxable year thereafter	100,000
2nd taxable year thereafter	75,000
3rd taxable year thereafter	75,000
Each taxable year thereafter	50,000

(h) Any amounts deducted under subdivision (a) with respect to Section 17267.6 property that ceases to be used in the qualified taxpayer's trade or business within a targeted tax area at any time before the close of the second taxable year after the property is placed in service shall be included in income in the taxable year in which the property ceases to be so used.

SEC. 6. Section 17276.2 of the Revenue and Taxation Code is amended to read:

17276.2. The term "qualified taxpayer" as used in Section 17276.1 means any of the following:

(a) A person or entity engaged in the conduct of a trade or business within an enterprise zone designated pursuant to chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(1) A net operating loss shall not be a net operating loss carryback to any taxable year and a net operating loss for any taxable year beginning on or after the date that the area in which the taxpayer conducts a trade or business is designated as an enterprise zone shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of loss.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the taxpayer's business activities within the enterprise zone (as defined in Chapter 12.8 (commencing with Section 7070)

of Division 7 of Title 1 of the Government Code) prior to the enterprise zone expiration date. That attributable loss shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section by substituting "enterprise zone" for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to the enterprise zone (as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code) determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section by substituting "enterprise zone" for "this state."

(C) "Enterprise zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(b) A person or entity engaged in the conduct of a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(1) A net operating loss shall not be a net operating loss carryback for any taxable year, and a net operating loss for any taxable year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated the Los Angeles Revitalization Zone shall be a net operating loss carryover to each following taxable year that ends before the Los Angeles Revitalization Zone expiration date or to each of the 15 taxable years following the taxable year of loss, if longer.

(2) For the purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the taxpayer's business activities within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) prior to the Los Angeles Revitalization Zone expiration date. The attributable loss shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11, modified as follows:

(i) Loss shall be apportioned to the Los Angeles Revitalization Zone by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The Los Angeles Revitalization Zone" shall be substituted for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) determined in accordance with paragraph (3).

(3) Attributable income shall be that portion of the taxpayer's California source business income which is apportioned to the Los Angeles Revitalization Zone. For that purpose, the taxpayer's

business income attributable to sources in this state first shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11. That business income shall be further apportioned to the Los Angeles Revitalization Zone in accordance with Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(A) Business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year.

(C) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the taxable year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the taxable year.

(4) "Los Angeles Revitalization Zone expiration date" means the date the Los Angeles Revitalization Zone designation expires, is repealed, or becomes inoperative pursuant to Section 7102, 7103, or 7104 of the Government Code.

(5) This subdivision shall be inoperative on the first day of the taxable year beginning on or after the determination date, and each taxable year thereafter, with respect to the taxpayer's business activities within a geographic area that is excluded from the map pursuant to Section 7102 of the Government Code, or an excluded area determined pursuant to Section 7104 of the Government Code. The determination date is the earlier of the first effective date of a determination under subdivision (c) of Section 7102 of the Government Code occurring after December 1, 1994, or the first effective date of an exclusion of an area from the amended Los Angeles Revitalization Zone under Section 7104 of the Government Code. However, if the taxpayer has any unused loss amount as of the date this section becomes inoperative, that unused loss amount may continue to be carried forward as provided in this subdivision.

(6) This subdivision shall cease to be operative on January 1, 1998. However, any unused net operating loss may continue to be carried over to following years as provided in this subdivision.

(c) For each taxable year beginning on or after January 1, 1995, and before January 1, 2003, a taxpayer engaged in the conduct of a trade or business within a LAMBRA.

(1) A net operating loss shall not be a net operating loss carryback for any taxable year, and a net operating loss for any taxable year beginning on or after the date the area in which the taxpayer

conducts a trade or business is designated a LAMBRA shall be a net operating loss carryover to each following taxable year that ends before the LAMBRA expiration date or to each of the 15 taxable years following the taxable year of loss, if longer.

(2) For the purposes of this subdivision:

(A) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(B) "Taxpayer" means a person or entity that conducts a trade or business within a LAMBRA and, for the first two taxable years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA and this state.

(i) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the taxable year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second taxable year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the taxable year prior to commencing business operations in the LAMBRA shall be zero. The deduction shall be allowed only if the taxpayer has a net increase in jobs in the state, and if one or more full-time employees is employed within the LAMBRA.

(ii) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(I) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(II) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(iii) In the case of a taxpayer who first commences doing business in the LAMBRA during the taxable year, for purposes of subclauses (I) and (II), respectively, of clause (ii) the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the taxable year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(C) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the taxpayer's business activities within a LAMBRA prior to the LAMBRA expiration date. The attributable loss shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11, modified as follows:

(i) Loss shall be apportioned to a LAMBRA by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The LAMBRA" shall be substituted for "this state."

(D) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to a LAMBRA determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11, modified as follows:

(i) Business income shall be apportioned to a LAMBRA by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The LAMBRA" shall be substituted for "this state."

(iii) If a loss carryover is allowable pursuant to this section for any taxable year after the LAMBRA designation has expired, the LAMBRA shall be deemed to remain in existence for purposes of computing this limitation.

(E) "LAMBRA expiration date" means the date the LAMBRA designation expires, is no longer binding, or becomes inoperative pursuant to Section 7110 of the Government Code.

(d) (1) For each taxable year beginning on or after January 1, 1998, a person or entity that meets both of the following:

(A) Is engaged in a trade or business within a targeted tax area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(B) Is engaged in those lines of business described in Codes 2000 to 2099, inclusive; 2200 to 3999, inclusive; 4200 to 4299, inclusive; 4500 to 4599, inclusive; and 4700 to 5199, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition. In the case of any pass-through entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level.

(2) A net operating loss shall not be a net operating loss carryback to any taxable year and a net operating loss for any taxable year beginning on or after the date that the area in which the qualified taxpayer conducts a trade or business is designated as a targeted tax area shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of loss.

(3) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the qualified taxpayer's business activities within the targeted tax area (as defined in Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code) prior to the targeted tax area expiration date. That attributable loss shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this subdivision as follows:

(i) Loss shall be apportioned to the targeted tax area by multiplying total loss from the business by a fraction, the numerator

of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The targeted tax area" shall be substituted for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to the qualified taxpayer's business income attributable to the targeted tax area (as defined in Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code) determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this subdivision as follows:

(i) Business income shall be apportioned to the targeted tax area by multiplying the total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The targeted tax area" shall be substituted for "this state."

(C) If a loss carryover is allowable pursuant to this subdivision for any taxable year after the targeted tax area expiration date, the targeted tax area designation shall be deemed to remain in existence for purposes of computing the limitation specified in this subparagraph.

(D) "Targeted tax area expiration date" means the date the targeted tax area designation expires, is revoked, is no longer binding, or becomes inoperative.

(e) A taxpayer who qualifies as a "qualified taxpayer" shall, for the taxable year of the net operating loss and any taxable year to which that net operating loss may be carried, designate on the original return filed for each year the subdivision of this section which applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one subdivision of this section, the designation is to be made after taking into account subdivision (f).

(f) If a taxpayer is eligible to qualify under more than one subdivision of this section as a "qualified taxpayer," with respect to a net operating loss in a taxable year, the taxpayer shall designate which subdivision of this section is to apply to the taxpayer.

(g) Notwithstanding Section 17276, the amount of the loss determined under this section shall be the only net operating loss allowed to be carried over from that taxable year and the designation under subdivision (d) shall be included in the election under Section 17276.1.

SEC. 7. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) (1) The term "tax" includes any of the following:

(A) The tax imposed under Chapter 2 (commencing with Section 23101).

(B) The tax imposed under Chapter 3 (commencing with Section 23501).

(C) The tax on unrelated business taxable income, imposed under Section 23731.

(D) The tax on S corporations imposed under Section 23802.

(2) The term "tax" does not include any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.

(b) For purposes of Article 5 (commencing with Section 18661) of Chapter 2, Article 3 (commencing with Section 19031) of Chapter 4, Article 6 (commencing with Section 19101) of Chapter 4, and Chapter 7 (commencing with Section 19501) of Part 10.2, and for purposes of Sections 18601, 19001, and 19005, the term "tax" shall also include all of the following:

(1) The tax on limited partnerships, imposed under Section 17935 or Section 23081, the tax on limited liability companies, imposed under Section 17941 or Section 23091, and the tax on registered limited liability partnerships and foreign limited liability partnerships imposed under Section 17948 or Section 23097.

(2) The alternative minimum tax imposed under Chapter 2.5 (commencing with Section 23400).

(3) The tax on built-in gains of S corporations, imposed under Section 23809.

(4) The tax on excess passive investment income of S corporations, imposed under Section 23811.

(c) Notwithstanding any other provision of this part, credits shall be allowed against the "tax" in the following order:

(1) Credits that do not contain carryover provisions.

(2) Credits that, when the credit exceeds the "tax," allow the excess to be carried over to offset the "tax" in succeeding taxable years. The order of credits within this paragraph shall be determined by the Franchise Tax Board.

(3) The minimum tax credit allowed by Section 23453.

(4) Credits for taxes withheld under Section 18662.

(d) Notwithstanding any other provision of this part, each of the following shall be applicable:

(1) No credit shall reduce the "tax" below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455), except the following credits, but only after allowance of the credit allowed by Section 23453:

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by former Section 23601.4 (relating to solar energy).

(C) The credit allowed by Section 23601.5 (relating to solar energy).

(D) The credit allowed by Section 23609 (relating to research expenditures).

(E) The credit allowed by Section 23609.5 (relating to clinical testing expenses).

(F) The credit allowed by Section 23610.5 (relating to low-income housing).

(G) The credit allowed by former Section 23612 (relating to sales and use tax credit).

(H) The credit allowed by Section 23612.2 (relating to enterprise zone sales or use tax credit).

(I) The credit allowed by Section 23612.6 (relating to Los Angeles Revitalization Zone sales tax credit).

(J) The credit allowed by former Section 23622 (relating to enterprise zone hiring credit).

(K) The credit allowed by Section 23622.5 (relating to enterprise zone hiring credit).

(L) The credit allowed by former Section 23623 (relating to program area hiring credit).

(M) For each income year beginning on or after January 1, 1994, the credit allowed by Section 23623.5 (relating to Los Angeles Revitalization Zone hiring credit).

(N) The credit allowed by Section 23625 (relating to Los Angeles Revitalization Zone hiring credit).

(O) The credit allowed by Section 23633 (relating to targeted tax area sales or use tax credit).

(P) The credit allowed by Section 23634 (relating to targeted tax area hiring credit).

(Q) The credit allowed by Section 23649 (relating to qualified property).

(2) No credit against the tax shall reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).

(e) Any credit which is partially or totally denied under subdivision (d) shall be allowed to be carried over to reduce the "tax" in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.

(f) Unless otherwise provided, any remaining carryover from a credit that has been repealed or made inoperative shall continue to be allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(g) Unless otherwise provided, if two or more taxpayers share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to its respective share of the costs paid or incurred.

(h) Unless otherwise provided, in the case of an S corporation, any credit allowed by this part shall be computed at the S corporation level, and any limitation on the expenses qualifying for the credit or limitation upon the amount of the credit shall be applied to the S corporation and to each shareholder.

SEC. 8. Section 23633 is added to the Revenue and Taxation Code, to read:

23633. (a) For each income year beginning on or after January 1, 1998, there shall be allowed as a credit against the "tax" (as defined by Section 23036) for the income year an amount equal to the sales or use tax paid or incurred during the income year by the qualified taxpayer in connection with the qualified taxpayer's purchase of qualified property.

(b) For purposes of this section:

(1) "Qualified property" means property that meets all of the following requirements:

(A) Is any of the following:

(i) Machinery and machinery parts used for fabricating, processing, assembling, and manufacturing.

(ii) Machinery and machinery parts used for the production of renewable energy resources.

(iii) Machinery and machinery parts used for either of the following:

(I) Air pollution control mechanisms.

(II) Water pollution control mechanisms.

(iv) Data processing and communications equipment, such as computers, computer-automated drafting systems, copy machines, telephone systems, and faxes.

(v) Motion picture manufacturing equipment central to production and post production, such as cameras, audio recorders, and digital image and sound processing equipment.

(B) The total cost of qualified property purchased and placed in service in any income year that may be taken into account by any qualified taxpayer for purposes of claiming this credit shall not exceed twenty million dollars ($20,000,000).

(C) The qualified property is used by the qualified taxpayer exclusively in a targeted tax area.

(D) The qualified property is purchased and placed in service before the date the targeted tax area designation expires, is revoked, is no longer binding, or becomes inoperative.

(2) (A) "Qualified taxpayer" means a corporation that meets both of the following:

(i) Is engaged in a trade or business within a targeted tax area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(ii) Is engaged in those lines of business described in Codes 2000 to 2099, inclusive; 2200 to 3999, inclusive; 4200 to 4299, inclusive; 4500 to 4599, inclusive; and 4700 to 5199, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(B) In the case of any pass-through entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section or Section 17053.33 shall be allowed to the pass-through entity and passed through to the partners or shareholders in accordance with

applicable provisions of this part or Part 10 (commencing with Section 17001). For purposes of this subparagraph, the term "pass-through entity" means any partnership or S corporation.

(3) "Targeted tax area" means the area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(c) If the qualified taxpayer is allowed a credit for qualified property pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to that qualified property.

(d) If the qualified taxpayer has purchased property upon which a use tax has been paid or incurred, the credit provided by this section shall be allowed only if qualified property of a comparable quality and price is not timely available for purchase in this state.

(e) In the case where the credit otherwise allowed under this section exceeds the "tax" for the income year, that portion of the credit that exceeds the "tax" may be carried over and added to the credit, if any, in the following year, and succeeding years if necessary, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(f) Any qualified taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the qualified property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the qualified taxpayer's purchase of qualified property.

(g) (1) The amount of credit otherwise allowed under this section and Section 23634, including any credit carryover from prior years, that may reduce the "tax" for the income year shall not exceed the amount of tax that would be imposed on the qualified taxpayer's business income attributable to the targeted tax area determined as if that attributable income represented all of the income of the qualified taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be determined in accordance with Chapter 17 (commencing with Section 25101), modified for purposes of this section, as follows:

(A) Business income shall be apportioned to the targeted tax area by multiplying the total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) "The targeted tax area" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the "tax" for the income year, as provided in subdivision (e).

(4) In the event that a credit carryover is allowable under subdivision (e) for any income year after the targeted tax area designation has expired, has been revoked, is no longer binding, or has become inoperative, the targeted tax area shall be deemed to

remain in existence for purposes of computing the limitation specified in this subdivision.

SEC. 9. Section 23634 is added to the Revenue and Taxation Code, to read:

23634. (a) For each income year beginning on or after January 1, 1998, there shall be allowed a credit against the "tax" (as defined by Section 23036) to a qualified taxpayer who employs a qualified employee in a targeted tax area during the income year. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) That portion of wages paid or incurred by the qualified taxpayer during the income year to qualified employees that does not exceed 150 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the day the employee commences employment with the qualified taxpayer.

(C) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the targeted tax area expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the qualified taxpayer within the targeted tax area within the 60-month period prior to the targeted tax area expiration date shall continue to qualify for the credit under this section after the targeted tax area expiration date, in accordance with all provisions of this section applied as if the targeted tax area designation were still in existence and binding.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Targeted tax area expiration date" means the date the targeted tax area designation expires, is revoked, is no longer binding, or becomes inoperative.

(4) (A) "Qualified employee" means an individual who meets all of the following requirements:

(i) At least 90 percent of his or her services for the qualified taxpayer during the income year are directly related to the conduct

of the qualified taxpayer's trade or business located in a targeted tax area.

(ii) Performs at least 50 percent of his or her services for the qualified taxpayer during the income year in a targeted tax area.

(iii) Is hired by the qualified taxpayer after the date of original designation of the area in which services were performed as a targeted tax area.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act, or its successor.

(II) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, or its successor.

(III) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was an economically disadvantaged individual 14 years of age or older.

(IV) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a dislocated worker who meets any of the following:

(aa) Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

(bb) Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of the closure or layoff.

(cc) Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

(dd) Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

(ee) Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

(ff) Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

(gg) Is a seasonal or migrant worker who experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

(hh) Has been terminated or laid off, or has received a notice of termination or layoff, as a consequence of compliance with the Clean Air Act.

(V) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a disabled individual who is eligible for or enrolled in, or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(VI) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was an ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilty.

(VII) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a person eligible for or a recipient of any of the following:

(aa) Federal Supplemental Security Income benefits.

(bb) Aid to Families with Dependent Children.

(cc) Food stamps.

(dd) State and local general assistance.

(VIII) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(IX) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a resident of a targeted tax area.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible under the federal Targeted Jobs Tax Credit Program.

(5) (A) "Qualified taxpayer" means a person or entity that meets both of the following:

(i) Is engaged in a trade or business within a targeted tax area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(ii) Is engaged in those lines of business described in Codes 2000 to 2099, inclusive; 2200 to 3999, inclusive; 4200 to 4299, inclusive; 4500 to 4599, inclusive; and 4700 to 5199, inclusive, of the Standard

Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(B) In the case of any pass-through entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section or Section 17053.34 shall be allowed to the pass-through entity and passed through to the partners or shareholders in accordance with applicable provisions of this part or Part 10 (commencing with Section 17001). For purposes of this subparagraph, the term "pass-through entity" means any partnership or S corporation.

(c) If the qualified taxpayer is allowed a credit for qualified wages pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to those qualified wages.

(d) The qualified taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department, as permitted by federal law, or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification that provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The Employment Development Department may provide preliminary screening and referral to a certifying agency. The Employment Development Department shall develop a form for this purpose.

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(e) (1) For purposes of this section:

(A) All employees of all corporations that are members of the same controlled group of corporations shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section to each member shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit, and shall be allocated in that manner.

(C) For purposes of this subdivision, "controlled group of corporations" means "controlled group of corporations" as defined in Section 1563(a) of the Internal Revenue Code, except that:

(i) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(ii) The determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal Revenue Code.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (f)) for any calendar year ending

after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(f) (1) If the employment of any qualified employee with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the qualified taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the qualified taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the qualified taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the qualified taxpayer fails to offer reemployment to that employee.

(iii) A termination of employment of a qualified employee, if it is determined under the applicable unemployment compensation provisions that the termination was due to the misconduct of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that employee is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the qualified taxpayer and a qualified employee shall not be treated as terminated by either of the following:

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the qualified employee continues to be employed by the acquiring corporation.

(ii) By reason of a mere change in the form of conducting the trade or business of the qualified taxpayer, if the qualified employee continues to be employed in that trade or business and the qualified taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(g) Rules similar to the rules provided in Sections 46(e) and (h) of the Internal Revenue Code shall apply to both of the following:

(1) An organization to which Section 593 of the Internal Revenue Code applies.

(2) A regulated investment company or a real estate investment trust subject to taxation under this part.

(h) For purposes of this section, "targeted tax area" means an area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(i) In the case where the credit otherwise allowed under this section exceeds the "tax" for the income year, that portion of the credit that exceeds the "tax" may be carried over and added to the credit, if any, in succeeding income years, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 23633, including any credit carryover from prior years, that may reduce the "tax" for the income year shall not exceed the amount of tax that would be imposed on the qualified taxpayer's business income attributable to the targeted tax area determined as if that attributable income represented all of the income of the qualified taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be determined in accordance with Chapter 17 (commencing with Section 25101), modified for purposes of this section as follows:

(A) Business income shall be apportioned to the targeted tax area by multiplying the total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) "The targeted tax area" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the "tax" for the income year, as provided in subdivision (h).

(4) In the event that a credit carryover is allowable under subdivision (h) for any income year after the targeted tax area designation has expired or been revoked, the targeted tax area shall be deemed to remain in existence for purposes of computing the limitation specified in this subdivision.

SEC. 10. Section 24356.6 is added to the Revenue and Taxation Code, to read:

24356.6. (a) For each income year beginning on or after January 1, 1998, a qualified taxpayer may elect to treat 40 percent of the cost of any Section 24356.6 property as an expense that is not chargeable to a capital account. Any cost so treated shall be allowed as a deduction for the income year in which the qualified taxpayer places the Section 24356.6 property in service.

(b) (1) An election under this section for any income year shall do both of the following:

(A) Specify the items of Section 24356.6 property to which the election applies and the percentage of the cost of each of those items that are to be taken into account under subdivision (a).

(B) Be made on the qualified taxpayer's original return of the tax imposed by this part for the income year.

(2) Any election made under this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(c) (1) For purposes of this section, "Section 24356.6 property" means any recovery property that is:

(A) Section 1245 property (as defined in Section 1245 (a)(3) of the Internal Revenue Code).

(B) Purchased and placed in service by the qualified taxpayer for exclusive use in a trade or business conducted within a targeted tax area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(C) Purchased and placed in service before the date the targeted tax area designation expires, is revoked, is no longer binding, or becomes inoperative.

(2) For purposes of paragraph (1), "purchase" means any acquisition of property, but only if all of the following apply:

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under Section 267 or 707(b) of the Internal Revenue Code. However, in applying Sections 267(b) and 267(c) for purposes of this section, Section 267(c)(4) shall be treated as providing that the family of an individual shall include only the individual's spouse, ancestors, and lineal descendants.

(B) The property is not acquired by one member of an affiliated group from another member of the same affiliated group.

(C) The basis of the property in the hands of the person acquiring it is not determined in whole or in part by reference to the adjusted basis of that property in the hands of the person from who it is acquired.

(3) For purposes of this section, the cost of property does not include that portion of the basis of that property that is determined by reference to the basis of other property held at any time by the person acquiring that property.

(4) This section shall not apply to any property for which the qualified taxpayer may not make an election under Section 179 of the Internal Revenue Code because of the application of the provisions of Section 179(d) of the Internal Revenue Code.

(5) For purposes of subdivision (b), both of the following apply:

(A) All members of an affiliated group shall be treated as one qualified taxpayer.

(B) The qualified taxpayer shall apportion the dollar limitation contained in subdivision (f) among the members of the affiliated group in whatever manner the board shall prescribe.

(6) For purposes of paragraphs (2) and (5), "affiliated group" means "affiliated group" as defined in Section 1504 of the Internal Revenue Code, except that, for these purposes, the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in Section 1504(a) of the Internal Revenue Code.

(d) (1) For purposes of this section, "qualified taxpayer" means a corporation that meets both of the following:

(A) Is engaged in conducting a trade or business within a targeted tax area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(B) Is engaged in those lines of business described in Codes 2000 to 2099, inclusive; 2200 to 3999, inclusive; 4200 to 4299, inclusive; 4500 to 4599, inclusive, and 4700 to 5199, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(2) In the case of any pass-through entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any deduction under this section or Section 17267.6 shall be allowed to the pass-through entity and passed through to the partners or shareholders in accordance with applicable provisions of this part or Part 10 (commencing with Section 17001). For purposes of this subparagraph, the term "pass-through entity" means any partnership or S corporation.

(e) Any qualified taxpayer who elects to be subject to this section shall not be entitled to claim additional depreciation pursuant to Section 24356 with respect to any property that constitutes Section 24356.6 property. However, the qualified taxpayer may claim depreciation by any method permitted by Section 24349 commencing with the income year following the income year in which Section 24356.6 property is placed in service.

(f) The aggregate cost of all Section 24356.6 property that may be taken into account under subdivision (a) for any income year shall not exceed the following applicable amount for the income year of the designation of the relevant targeted tax area and income years thereafter:

	The applicable amount is:
Income year of designation	$100,000
1st income year thereafter	100,000
2nd income year thereafter	75,000
3rd income year thereafter	75,000
Each income year thereafter	50,000

(g) Any amounts deducted under subdivision (a) with respect to Section 24356.6 property that ceases to be used in the qualified taxpayer's trade or business within a targeted tax area at any time before the close of the second income year after the property is placed in service shall be included in income in the income year in which the property ceases to be so used.

SEC. 11. Section 24416.2 of the Revenue and Taxation Code is amended to read:

24416.2. The term "qualified taxpayer" as used in Section 24416.1 means any of the following:

(a) A bank or corporation engaged in the conduct of a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(1) A net operating loss shall not be a net operating loss carryback for any income year and a net operating loss for any income year beginning on or after the date that the area in which the taxpayer conducts a trade or business is designated as an enterprise zone shall be a net operating loss carryover to each of the 15 income years following the income year of loss.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the taxpayer's business activities within the enterprise zone (as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code) prior to the enterprise zone expiration date. That attributable loss shall be determined in accordance with Chapter 17 (commencing with Section 25101), modified for purposes of this section by substituting "enterprise zone" for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to the enterprise zone (as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code) determined in accordance with Chapter 17 (commencing with Section 25101), modified for purposes of this section by substituting "enterprise zone" for "this state."

(C) "Enterprise zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(b) A bank or corporation engaged in the conduct of a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(1) (A) A net operating loss shall not be a net operating loss carryback for any income year and, except as provided in subparagraph (B), a net operating loss for any income year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated the Los Angeles

Revitalization Zone shall be a net operating loss carryover to each following income year that ends before the Los Angeles Revitalization Zone expiration date or to each of the 15 income years following the income year of loss, if longer.

(B) In the case of a financial institution to which Section 585, 586, or 593 of the Internal Revenue Code applies, a net operating loss for any income year beginning on or after January 1, 1984, shall be a net operating loss carryover to each of the five years following the income year of the loss. Subdivision (b) of Section 24416.1 shall not apply.

(2) For the purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the taxpayer's business activities within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) prior to the Los Angeles Revitalization Zone expiration date. The attributable loss shall be determined in accordance with Chapter 17 (commencing with Section 25101), modified as follows:

(i) The loss shall be apportioned to the Los Angeles Revitalization Zone by multiplying the loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The Los Angeles Revitalization Zone" shall be substituted for this state.

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) determined in accordance with paragraph (3).

(3) Attributable income shall be that portion of the taxpayer's California source business income which is apportioned to the Los Angeles Revitalization Zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the Los Angeles Revitalization Zone in accordance with Article 2 (commencing with Section 25120) of Chapter 17, modified as follows:

(A) Business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the income year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(C) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the income year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the income year.

(4) "Los Angeles Revitalization Zone expiration date" means the date the Los Angeles Revitalization Zone designation expires, is repealed, or becomes inoperative pursuant to Section 7102, 7103, or 7104 of the Government Code.

(5) This subdivision shall be inoperative on the first day of the income year beginning on or after the determination date, and each income year thereafter, with respect to the taxpayer's business activities within a geographic area that is excluded from the map pursuant to Section 7102 of the Government Code, or an excluded area determined pursuant to Section 7104 of the Government Code. The determination date is the earlier of the first effective date of a determination under subdivision (c) of Section 7102 of the Government Code occurring after December 1, 1994, or the first effective date of an exclusion of an area from the amended Los Angeles Revitalization Zone under Section 7104 of the Government Code. However, if the taxpayer has any unused loss amount as of the date this section becomes inoperative, that unused loss amount may continue to be carried forward as provided in this subdivision.

(6) This subdivision shall cease to be operative on January 1, 1998. However, any unused net operating loss may continue to be carried over to following years as provided in this subdivision.

(c) For each income year beginning on or after January 1, 1995, and before January 1, 2003, a taxpayer engaged in the conduct of a trade or business within a LAMBRA.

(1) (A) A net operating loss shall not be a net operating loss carryback for any income year and, except as provided in subparagraph (B), a net operating loss for any income year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated a LAMBRA shall be a net operating loss carryover to each following income year that ends before the LAMBRA expiration date or to each of the 15 income years following the income year of loss, if longer.

(B) In the case of a financial institution to which Section 585, 586, or 593 of the Internal Revenue Code applies, a net operating loss for any income year beginning on or after January 1, 1984, shall be a net operating loss carryover to each of the five years following the income year of the loss. Subdivision (b) of Section 24416.1 shall not apply.

(2) For the purposes of this subdivision:

(A) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(B) "Taxpayer" means a bank or corporation that conducts a trade or business within a LAMBRA and, for the first two income years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA and this state.

(i) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the income year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second income year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the income year prior to commencing business operations in the LAMBRA shall be zero. The deduction shall be allowed only if the taxpayer has a net increase in jobs in the state, and if one or more full-time employees is employed within the LAMBRA.

(ii) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(I) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(II) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(iii) In the case of a taxpayer that first commences doing business in the LAMBRA during the income year, for purposes of subclauses (I) and (II), respectively, of clause (ii) the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the income year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(C) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the taxpayer's business activities within a LAMBRA prior to the LAMBRA expiration date. The attributable loss shall be determined in accordance with Chapter 17 (commencing with Section 25101), modified as follows:

(i) Loss shall be apportioned to a LAMBRA by multiplying the loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The LAMBRA" shall be substituted for "this state."

(D) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to a LAMBRA determined in accordance with Chapter 17 (commencing with Section 25101), modified as follows:

(i) Business income shall be apportioned to a LAMBRA by multiplying total business income by a fraction, the numerator of

which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The LAMBRA" shall be substituted for "this state."

(iii) If a loss carryover is allowable pursuant to this section for any income year after the LAMBRA designation has expired, the LAMBRA shall be deemed to remain in existence for purposes of computing this limitation.

(E) "LAMBRA expiration date" means the date the LAMBRA designation expires, is no longer binding, or becomes inoperative pursuant to Section 7110 of the Government Code.

(d) (1) For each income year beginning on or after January 1, 1998, a corporation that meets both of the following:

(A) Is engaged in the conduct of a trade or business within a targeted tax area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(B) Is engaged in those lines of business described in Codes 2000 to 2099, inclusive; 2200 to 3999, inclusive; 4200 to 4299, inclusive; 4500 to 4599, inclusive; and 4700 to 5199, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition. In the case of any pass-through entity, the determination of whether a taxpayer is a qualified taxpayer shall be made at the entity level.

(2) A net operating loss shall not be a net operating loss carryback for any income year and a net operating loss for any income year beginning on or after the date that the area in which the qualified taxpayer conducts a trade or business is designated as a targeted tax area shall be a net operating loss carryover to each of the 15 income years following the income year of loss.

(3) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the qualified taxpayer's business activities within the targeted tax area (as defined in Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code) prior to the targeted tax area expiration date. That attributable loss shall be determined in accordance with Chapter 17 (commencing with Section 25101), modified for purposes of this subdivision as follows:

(i) Loss shall be apportioned to the targeted tax area by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The targeted tax area" shall be substituted for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to the qualified taxpayer's business income attributable to the targeted tax area (as defined in Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code)

determined in accordance with Chapter 17 (commencing with Section 25101), modified for purposes of this subdivision as follows:

(i) Business income shall be apportioned to the targeted tax area by multiplying the total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The targeted tax area" shall be substituted for "this state."

(C) If a loss carryover is allowable pursuant to this subdivision for any income year after the targeted tax area expiration date, the targeted tax area designation shall be deemed to remain in existence for purposes of computing the limitation specified in this subparagraph.

(D) "Targeted tax area expiration date" means the date the targeted tax area designation expires, is revoked, is no longer binding, or becomes inoperative.

(e) A taxpayer who qualifies as a "qualified taxpayer" shall, for the income year of the net operating loss and any income year to which that net operating loss may be carried, designate on the original return filed for each year the subdivision of this section which applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one subdivision of this section, the designation is to be made after taking into account subdivision (f).

(f) If a taxpayer is eligible to qualify under more than one subdivision of this section as a "qualified taxpayer," with respect to a net operating loss in an income year, the taxpayer shall designate which subdivision of this section is to apply to the taxpayer.

(g) Notwithstanding Section 24416, the amount of the loss determined under this section shall be the only net operating loss allowed to be carried over from that income year and the designation under subdivision (d) shall be included in the election under Section 24416.1.

CHAPTER 603

An act to add Section 7089 to the Government Code, and to amend Sections 17053.17, 17053.74, 17256, 17260, 23036, 23622.7, 23623.5, 24345, 24349.1, 24356.5, 24422, and 24916 of, to repeal Sections 17053.70, 17053.73, 17053.8, 17235, 17267, 23612.2, 23622, 23622.5, 24356.7, and 24384.5 of, and to repeal and amend Section 17053.75 of, the Revenue and Taxation Code, relating to economic development, to take effect immediately, tax levy.

[Approved by Governor October 1, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Section 7089 is added to the Government Code, to read:

7089. For purposes of the Revenue and Taxation Code, each of the following shall apply:

(a) Enterprise zones designated pursuant to former Chapter 12.8 (commencing with Section 7070), as that chapter read prior to January 1, 1997, shall be deemed to remain in existence for taxable or income years beginning on or after January 1, 1996, and before January 1, 1997.

(b) Program areas designated pursuant to former Chapter 12.9 (commencing with Section 7080), as that chapter read prior to January 1, 1997, shall be deemed to remain in existence for taxable or income years beginning on or after January 1, 1996, and before January 1, 1997.

(c) For taxable or income years beginning on or after January 1, 1996, and before January 1, 1997, a taxpayer conducting business activities located in an enterprise zone designated pursuant to this chapter shall be treated as conducting business activities in an enterprise zone designated pursuant to former Chapter 12.8 (commencing with Section 7070), as that chapter read prior to January 1, 1997, or a program area designated pursuant to former Chapter 12.9 (commencing with Section 7080), as that chapter read prior to January 1, 1997.

(d) For taxable or income years beginning on or after January 1, 1997, the carryover of any unused credits or deductions attributable to a taxpayer's business activities in an enterprise zone designated pursuant to former Chapter 12.8 (commencing with Section 7070), as that chapter read prior to January 1, 1997, or a program area designated pursuant to former Chapter 12.9 (commencing with Section 7080), as that chapter read prior to January 1, 1997, from taxable or income years beginning prior to January 1, 1997, shall be allowed, but shall be treated as if earned by a taxpayer or entity engaged in a trade or business within an enterprise zone designated pursuant to this chapter. The amount of carryovers of unused enterprise zone or program area credits shall not be recomputed under the enterprise zone tax provisions that become effective for taxable or income years beginning on or after January 1, 1997.

SEC. 2. Section 17053.17 of the Revenue and Taxation Code is amended to read:

17053.17. (a) For each taxable year beginning on or after January 1, 1992, and before January 1, 1998, the taxpayer shall be allowed for hiring qualified disadvantaged individuals on or after May 1, 1992, a credit against the "net tax," as defined in Section 17039, for the taxable year equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means all of the following:

(A) That portion of wages paid or incurred by the taxpayer during the taxable year to qualified disadvantaged individuals that does not exceed 150 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the day the individual commences employment with the taxpayer.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date.

(D) If, after a taxpayer hires a qualified disadvantaged individual, the geographic area in which the taxpayer's trade or business is located is excluded from the map of the Los Angeles Revitalization Zone by the Trade and Commerce Agency pursuant to Section 7102 or 7104 of the Government Code, wages paid or incurred with respect to the disadvantaged individual may continue to be qualified wages and may qualify for the credit under this section, provided all provisions of this section are satisfied, applied as if the taxpayer's trade or business was still located within the Los Angeles Revitalization Zone.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Qualified disadvantaged individual" means an individual who is a qualified employee and a resident of the Los Angeles Revitalization Zone.

(4) "Los Angeles Revitalization Zone" means the area designated under Section 7102 of the Government Code.

(5) "Qualified employee" means an individual that meets both of the following:

(A) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in the Los Angeles Revitalization Zone.

(B) Who performs at least 50 percent of his or her services for the taxpayer during the taxable year in the Los Angeles Revitalization Zone.

(6) "Resident" means a resident as defined in Section 7101 of the Government Code.

(7) "Taxpayer" means a person or entity engaged in a trade or business within the Los Angeles Revitalization Zone.

(8) "Zone expiration date" means the date the Los Angeles Revitalization Zone designation expires, is repealed, or becomes inoperative pursuant to Section 7102, 7103, or 7104 of the Government Code.

(9) (A) All employees of trades or businesses, that are not incorporated, that are under common control shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit and allocated in that manner.

Principles similar to the principles that apply in the case of controlled groups of corporations as specified in paragraph (9) of subdivision (b) of Section 23623.5 shall apply with respect to determining common control of employees.

(10) If an employer acquires the major portion of a trade or business of another employer (hereafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for the purposes of applying this section (other than subdivision (c)) for any calendar year ending after that acquisition, the employment relationship between a disadvantaged individual and an employer shall not be treated as terminated if the individual continues to be employed in that trade or business.

(c) (1) If the employment of any disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a), is terminated by the taxpayer at any time during the first 270 days of that employment, whether or not consecutive, or before the close of the 270th calendar day after the day in which that individual completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that individual.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a disadvantaged individual who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a disadvantaged individual who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of a disadvantaged individual, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of a disadvantaged individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a disadvantaged individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and a disadvantaged individual shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the individual continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(d) In the case of an estate or trust, both of the following apply:

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated, for purposes of this part, as the employer with respect to those wages.

(e) The credit shall be reduced by the credits allowed under Sections 17053.7, 17053.10, and 17053.74, claimed for the same disadvantaged individual. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (f) or (g).

(f) In the case where the credit otherwise allowed under this section exceeds the net tax for the taxable year, that portion of the credit that exceeds the net tax may be carried over and added to the credit, if any, in succeeding taxable years while the designation of the Los Angeles Revitalization Zone under Section 7102 of the Government Code is operative, or 15 taxable years, if longer, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(g) (1) The amount of the credit otherwise allowed under this section and Sections 17052.15 and 17053.10, including any credit carryover from prior years, that may reduce the net tax for the taxable year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributable to the Los Angeles Revitalization Zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be that portion of the taxpayer's California source business income which is apportioned to the Los Angeles Revitalization Zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11. That business income shall be further apportioned to the Los Angeles Revitalization Zone in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(A) Business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year.

(C) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the taxable year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the taxable year.

(3) The portion of the credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the net tax for the taxable year, as provided in subdivision (f).

(h) Except as provided in subparagraph (D) of paragraph (1) of subdivision (b), this section shall cease to be operative as of the first day of the taxable year beginning on or after the determination date, and each taxable year thereafter, with respect to the taxpayer's business activities within a geographic area that is excluded from the map pursuant to Section 7102 of the Government Code, or an excluded area determined pursuant to Section 7104 of the Government Code. For purposes of this subdivision, "determination date" means the earlier of the first effective date of a determination under subdivision (c) of Section 7102 of the Government Code occurring after December 1, 1994, or the first effective date of an exclusion of an area from the amended Los Angeles Revitalization Zone under Section 7104 of the Government Code. However, if the taxpayer has any unused credit amount as of the date this section becomes inoperative, that unused credit amount may continue to be carried forward as provided in subdivision (f).

(i) This section shall remain in effect only until December 1, 1998, and as of that date is repealed. However, any unused credit may continue to be carried forward, as specified in subdivision (f).

SEC. 3. Section 17053.70 of the Revenue and Taxation Code, as added by Section 9 of Chapter 953 of the Statutes of 1996, is repealed.

SEC. 4. Section 17053.73 of the Revenue and Taxation Code is repealed.

SEC. 5. Section 17053.74 of the Revenue and Taxation Code is amended to read:

17053.74. (a) There shall be allowed a credit against the "net tax" (as defined in Section 17039) to a taxpayer who employs a qualified employee in an enterprise zone during the taxable year. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) (i) Except as provided in clause (ii), that portion of wages paid or incurred by the taxpayer during the taxable year to qualified employees that does not exceed 150 percent of the minimum wage.

(ii) For up to 1,350 qualified employees who are employed by the taxpayer in the Long Beach Enterprise Zone in aircraft manufacturing activities described in Codes 3721 to 3728, inclusive, and Code 3812 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, "qualified wages" means that portion of hourly wages that does not exceed 202 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the day the employee commences employment with the taxpayer.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the taxpayer within the enterprise zone within the 60-month period prior to the zone expiration date shall continue to qualify for the credit under this section after the zone expiration date, in accordance with all provisions of this section applied as if the enterprise zone designation were still in existence and binding.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(4) (A) "Qualified employee" means an individual who meets all of the following requirements:

(i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone.

(ii) Performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise zone.

(iii) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise zone.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act, or its successor.

(II) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, or its successor.

(III) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an economically disadvantaged individual 14 years of age or older.

(IV) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a dislocated worker who meets any of the following:

Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of the closure or layoff.

Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

Is a seasonal or migrant worker who experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

Has been terminated or laid off, or has received a notice of termination or layoff, as a consequence of compliance with the Clean Air Act.

(V) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a disabled individual who is eligible for or enrolled in, or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(VI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilt.

(VII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for or a recipient of any of the following:

Federal Supplemental Security Income benefits.

Aid to Families with Dependent Children.

Food stamps.

State and local general assistance.

(VIII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(IX) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a resident of a targeted employment area, as defined in Section 7072 of the Government Code.

(X) An employee who qualified the taxpayer for the enterprise zone hiring credit under former Section 17053.8 or the program area hiring credit under former Section 17053.11.

(XI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a targeted group, as defined in Section 51(d) of the Internal Revenue Code, or its successor.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of

1985 or who is eligible as a member of a targeted group under the Work Opportunity Tax Credit (Section 51 of the Internal Revenue Code), or its successor.

(5) "Taxpayer" means a person or entity engaged in a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of the Government Code.

(c) The taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department, as permitted by federal law, or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification which provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The Employment Development Department may provide preliminary screening and referral to a certifying agency. The Employment Development Department shall develop a form for this purpose.

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(d) (1) For purposes of this section:

(A) All employees of trades or businesses, which are not incorporated, that are under common control shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit, and shall be allocated in such manner.

(C) Principles that apply in the case of controlled groups of corporations, as specified in subdivision (d) of Section 23622.7, shall apply with respect to determining employment.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (e)) for any calendar year ending after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(e) (1) If the employment of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all

prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that employee.

(iii) A termination of employment of a qualified employee, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that employee is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and a qualified employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the qualified employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(f) In the case of an estate or trust, both of the following apply:

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated, for purposes of this part, as the employer with respect to those wages.

(g) For purposes of this section, "enterprise zone" means an area designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(h) The credit allowable under this section shall be reduced by the credit allowed under Sections 17053.10, 17053.17 and 17053.46 claimed for the same employee. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the

credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (i) or (j).

(i) In the case where the credit otherwise allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit that exceeds the "net tax" may be carried over and added to the credit, if any, in succeeding taxable years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 17053.70, including any credit carryover from prior years, that may reduce the "net tax" for the taxable year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section by substituting "the enterprise zone" for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (i).

(k) The changes made to this section by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 1997.

SEC. 6. Section 17053.75 of the Revenue and Taxation Code, as added by Section 11 of Chapter 953 of the Statutes of 1996, is repealed.

SEC. 7. Section 17053.75 of the Revenue and Taxation Code, as added by Section 11 of Chapter 955 of the Statutes of 1996, is amended to read:

17053.75. (a) There shall be allowed as a credit against the "net tax" (as defined by Section 17039) for the taxable year an amount equal to five percent of the qualified wages received by the taxpayer during the taxable year.

(b) For purposes of this section:

(1) "Qualified employee" means a taxpayer who meets both of the following:

(A) Is described in clauses (i) and (ii) of subparagraph (A) of paragraph (4) of subdivision (b) of Section 17053.74.

(B) Is not an employee of the federal government or of this state or of any political subdivision of this state.

(2) (A) "Qualified wages" means "wages," as defined in subsection (b) of Section 3306 of the Internal Revenue Code, attributable to services performed for an employer with respect to whom the taxpayer is a qualified employee in an amount that does

not exceed one and one-half times the dollar limitation specified in that subsection.

(B) "Qualified wages" does not include any compensation received from the federal government or this state or any political subdivision of this state.

(C) "Qualified wages" does not include any wages received on or after the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(3) "Enterprise zone" means any area designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(c) For each dollar of income received by the taxpayer in excess of qualified wages, as defined in this section, the credit shall be reduced by nine cents ($0.09).

(d) The amount of the credit allowed by this section in any taxable year shall not exceed the amount of tax that would be imposed on the taxpayer's income attributable to employment within the enterprise zone as if that income represented all of the income of the taxpayer subject to tax under this part.

SEC. 8. Section 17053.8 of the Revenue and Taxation Code is repealed.

SEC. 9. Section 17235 of the Revenue and Taxation Code, as added by Section 13 of Chapter 953 of the Statutes of 1996, is repealed.

SEC. 10. Section 17256 of the Revenue and Taxation Code is amended to read:

17256. Section 179A of the Internal Revenue Code, relating to deduction for clean-fuel vehicles and certain refueling property, shall apply to property placed in service after June 30, 1993, without regard to taxable year, and is modified as follows:

(a) Section 179A(e)(5) of the Internal Revenue Code, relating to property used outside the United States, is modified to also refer to Section 17266 or 17267.2.

(b) Section 179A(g) of the Internal Revenue Code, relating to termination, is modified to substitute "December 31, 1994" for "December 31, 2004."

SEC. 11. Section 17260 of the Revenue and Taxation Code is amended to read:

17260. (a) No deduction, other than depreciation, shall be allowed for expenditures for tertiary injectants as provided by Section 193 of the Internal Revenue Code.

(b) Section 263(a) of the Internal Revenue Code shall not apply to expenditures for which a deduction is allowed under Section 17266 or 17267.2.

SEC. 12. Section 17267 of the Revenue and Taxation Code, as added by Section 16 of Chapter 953 of the Statutes of 1996, is repealed.

SEC. 13. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) (1) The term "tax" includes any of the following:

(A) The tax imposed under Chapter 2 (commencing with Section 23101).

(B) The tax imposed under Chapter 3 (commencing with Section 23501).

(C) The tax on unrelated business taxable income, imposed under Section 23731.

(D) The tax on S corporations imposed under Section 23802.

(2) The term "tax" does not include any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.

(b) For purposes of Article 5 (commencing with Section 18661) of Chapter 2, Article 3 (commencing with Section 19031) of Chapter 4, Article 6 (commencing with Section 19101) of Chapter 4, and Chapter 7 (commencing with Section 19501) of Part 10.2, and for purposes of Sections 18601, 19001, and 19005, the term "tax" shall also include all of the following:

(1) The tax on limited partnerships, imposed under Section 17935 or Section 23081, the tax on limited liability companies, imposed under Section 17941 or Section 23091, and the tax on registered limited liability partnerships and foreign limited liability partnerships imposed under Section 17948 or Section 23097.

(2) The alternative minimum tax imposed under Chapter 2.5 (commencing with Section 23400).

(3) The tax on built-in gains of S corporations, imposed under Section 23809.

(4) The tax on excess passive investment income of S corporations, imposed under Section 23811.

(c) Notwithstanding any other provision of this part, credits shall be allowed against the "tax" in the following order:

(1) Credits that do not contain carryover provisions.

(2) Credits that, when the credit exceeds the "tax," allow the excess to be carried over to offset the "tax" in succeeding taxable years. The order of credits within this paragraph shall be determined by the Franchise Tax Board.

(3) The minimum tax credit allowed by Section 23453.

(4) Credits for taxes withheld under Section 18662.

(d) Notwithstanding any other provision of this part, each of the following shall be applicable:

(1) No credit shall reduce the "tax" below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455), except the following credits, but only after allowance of the credit allowed by Section 23453:

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by former Section 23601.4 (relating to solar energy).

(C) The credit allowed by Section 23601.5 (relating to solar energy).

(D) The credit allowed by Section 23609 (relating to research expenditures).

(E) The credit allowed by Section 23609.5 (relating to clinical testing expenses).

(F) The credit allowed by Section 23610.5 (relating to low-income housing).

(G) The credit allowed by former Section 23612 (relating to sales and use tax credit).

(H) The credit allowed by Section 23612.2 (relating to enterprise zone sales or use tax credit).

(I) The credit allowed by Section 23612.6 (relating to Los Angeles Revitalization Zone sales tax credit).

(J) The credit allowed by former Section 23622 (relating to enterprise zone hiring credit).

(K) The credit allowed by Section 23622.7 (relating to enterprise zone hiring credit).

(L) The credit allowed by former Section 23623 (relating to program area hiring credit).

(M) For each income year beginning on or after January 1, 1994, the credit allowed by Section 23623.5 (relating to Los Angeles Revitalization Zone hiring credit).

(N) The credit allowed by Section 23625 (relating to Los Angeles Revitalization Zone hiring credit).

(O) The credit allowed by Section 23649 (relating to qualified property).

(2) No credit against the tax shall reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).

(e) Any credit which is partially or totally denied under subdivision (d) shall be allowed to be carried over to reduce the "tax" in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.

(f) Unless otherwise provided, any remaining carryover from a credit that has been repealed or made inoperative shall continue to be allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(g) Unless otherwise provided, if two or more taxpayers share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to its respective share of the costs paid or incurred.

(h) Unless otherwise provided, in the case of an S corporation, any credit allowed by this part shall be computed at the S corporation level, and any limitation on the expenses qualifying for the credit or limitation upon the amount of the credit shall be applied to the S corporation and to each shareholder.

SEC. 14. Section 23612.2 of the Revenue and Taxation Code, as added by Section 20 of Chapter 953 of the Statutes of 1996, is repealed.

SEC. 15. Section 23622 of the Revenue and Taxation Code is repealed.

SEC. 16. Section 23622.5 of the Revenue and Taxation Code is repealed.

SEC. 17. Section 23622.7 of the Revenue and Taxation Code is amended to read:

23622.7. (a) There shall be allowed a credit against the "tax" (as defined by Section 23036) to a taxpayer who employs a qualified employee in an enterprise zone during the income year. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) (i) Except as provided in clause (ii), that portion of wages paid or incurred by the taxpayer during the income year to qualified employees that does not exceed 150 percent of the minimum wage.

(ii) For up to 1,350 qualified employees who are employed by the taxpayer in the Long Beach Enterprise Zone in aircraft manufacturing activities described in Codes 3721 to 3728, inclusive, and Code 3812 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, "qualified wages" means that portion of hourly wages that does not exceed 202 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the day the employee commences employment with the taxpayer.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the taxpayer within the enterprise zone within the 60-month period prior to the zone expiration date shall continue to qualify for the credit under this section after the zone expiration date, in accordance with all provisions of this section applied as if the enterprise zone designation were still in existence and binding.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(4) (A) "Qualified employee" means an individual who meets all of the following requirements:

(i) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone.

(ii) Performs at least 50 percent of his or her services for the taxpayer during the income year in an enterprise zone.

(iii) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise zone.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act, or its successor.

(II) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, or its successor.

(III) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an economically disadvantaged individual 14 years of age or older.

(IV) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a dislocated worker who meets any of the following:

Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of the closure or layoff.

Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

Is a seasonal or migrant worker who experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

Has been terminated or laid off, or has received a notice of termination or layoff, as a consequence of compliance with the Clean Air Act.

(V) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a disabled individual who is eligible for or enrolled in, or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(VI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilt.

(VII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for or a recipient of any of the following:

Federal Supplemental Security Income benefits.

Aid to Families with Dependent Children.

Food stamps.

State and local general assistance.

(VIII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(IX) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a resident of a targeted employment area (as defined in Section 7072 of the Government Code).

(X) An employee who qualified the taxpayer for the enterprise zone hiring credit under former Section 23622 or the program area hiring credit under former Section 23623.

(XI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a targeted group, as defined in Section 51(d) of the Internal Revenue Code, or its successor.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of

1985 or who is eligible as a member of a targeted group under the Work Opportunity Tax Credit (Section 51 of the Internal Revenue Code), or its successor.

(5) "Taxpayer" means a bank or corporation engaged in a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(c) The taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department, as permitted by federal law, or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification that provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The Employment Development Department may provide preliminary screening and referral to a certifying agency. The Employment Development Department shall develop a form for this purpose.

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(d) (1) For purposes of this section:

(A) All employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section to each member shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit, and shall be allocated in that manner.

(C) For purposes of this subdivision, "controlled group of corporations" means "controlled group of corporations" as defined in Section 1563(a) of the Internal Revenue Code, except that:

(i) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(ii) The determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal Revenue Code.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (e)) for any calendar year ending after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(e) (1) If the employment of any qualified employee with respect to whom qualified wages are taken into account under subdivision

(a) is terminated by the taxpayer at any time during the first 270 days of that employment, whether or not consecutive, or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that employee.

(iii) A termination of employment of a qualified employee, if it is determined under the applicable unemployment compensation provisions that the termination was due to the misconduct of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that employee is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and a qualified employee shall not be treated as terminated by either of the following:

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the qualified employee continues to be employed by the acquiring corporation.

(ii) By reason of a mere change in the form of conducting the trade or business of the taxpayer, if the qualified employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(f) Rules similar to the rules provided in Section 46(e) and (h) of the Internal Revenue Code shall apply to both of the following:

(1) An organization to which Section 593 of the Internal Revenue Code applies:

(2) A regulated investment company or a real estate investment trust subject to taxation under this part.

(g) For purposes of this section, "enterprise zone" means an area designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(h) The credit allowable under this section shall be reduced by the credit allowed under Sections 23623.5, 23625, and 23646 claimed for the same employee. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (i) or (j).

(i) In the case where the credit otherwise allowed under this section exceeds the "tax" for the income year, that portion of the credit that exceeds the "tax" may be carried over and added to the credit, if any, in succeeding income years, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 23612.2, including any credit carryover from prior years, that may reduce the "tax" for the income year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section by substituting "the enterprise zone" for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the "tax" for the income year, as provided in subdivision (i).

(k) The changes made to this section by the act adding this subdivision shall apply to income years beginning on or after January 1, 1997.

SEC. 18. Section 23623.5 of the Revenue and Taxation Code is amended to read:

23623.5. (a) For each income year beginning on or after January 1, 1992, and before January 1, 1998, the taxpayer shall be allowed for hiring qualified disadvantaged individuals on or after May 1, 1992, a credit against the "tax," as defined in Section 23036, for the income year equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) That portion of wages paid or incurred by the taxpayer during the income year to qualified disadvantaged individuals that does not exceed 150 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the day the disadvantaged individual commences employment with the taxpayer.

(C) Qualified wages does not include any wages paid or incurred by the taxpayer on or after the zone expiration date.

(D) If, after a taxpayer hires a qualified disadvantaged individual, the geographic area in which the taxpayer's trade or business is located is excluded from the map of the Los Angeles Revitalization Zone by the Trade and Commerce Agency pursuant to Section 7102 or 7104 of the Government Code, wages paid or incurred with respect to the disadvantaged individual may continue to be qualified wages and may qualify for the credit under this section, provided all provisions of this section are satisfied, applied as if the taxpayer's trade or business was still located within the Los Angeles Revitalization Zone.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Qualified disadvantaged individual" means an individual who is a qualified employee and a resident of the Los Angeles Revitalization Zone.

(4) "Los Angeles Revitalization Zone" means the area designated under Section 7102 of the Government Code.

(5) "Qualified employee" means an individual that meets both of the following:

(A) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in the Los Angeles Revitalization Zone.

(B) Who performs at least 50 percent of his or her services for the taxpayer during the income year in the Los Angeles Revitalization Zone.

(6) "Resident" means a "resident" as defined in Section 7101 of the Government Code.

(7) "Taxpayer" means a bank or corporation engaged in a trade or business within the Los Angeles Revitalization Zone.

(8) "Zone expiration date" means the date the Los Angeles Revitalization Zone designation expires, is repealed, or becomes

inoperative pursuant to Section 7102, 7103, or 7104 of the Government Code.

(9) (A) All employees of all corporations that are members of the same controlled group of corporations shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section to each member shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit and allocated in that manner.

(C) "Controlled group of corporations" means "controlled group of corporations" as defined in Section 1563(a) of the Internal Revenue Code, except that:

(i) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(ii) The determination shall be made without regard to Sections 1563(a)(4) and 1563(e)(3)(C) of the Internal Revenue Code.

(10) If a taxpayer acquires the major portion of a trade or business of another employer (hereafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for the purposes of applying this section (other than subdivision (c)) for any calendar year ending after that acquisition, the employment relationship between a disadvantaged individual and an employer shall not be treated as terminated if the individual continues to be employed in that trade or business.

(c) (1) If the employment of any disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a), is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that individual completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that individual.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a disadvantaged individual who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a disadvantaged individual who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of a disadvantaged individual, if it is determined under the applicable employment compensation

provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of a disadvantaged individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a disadvantaged individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and a disadvantaged individual shall not be treated as terminated by either of the following:

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the individual continues to be employed by the acquiring corporation.

(ii) By reason of a mere change in the form of conducting the trade or business of the taxpayer, if the individual continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(d) In the case of an organization to which Section 593 of the Internal Revenue Code applies, and a regulated investment company or a real estate investment trust subject to taxation under this part, rules similar to the rules provided in Sections 46(e) and 46(h) of the Internal Revenue Code shall apply.

(e) The credit shall be reduced by the credits allowed under Sections 23621, 23622.7, 23623, and 23625, claimed for the same disadvantaged individual. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (f) or (g).

(f) In the case where the credit otherwise allowed under this section exceeds tax for the income year, that portion of the credit that exceeds the tax may be carried over and added to the credit, if any, in succeeding income years while the designation of the Los Angeles Revitalization Zone under Section 7102 of the Government Code is operative or 15 income years, if longer, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(g) (1) The amount of credit otherwise allowed under this section and Sections 23612.6 and 23625, including any credit carryover from prior years, that may reduce the tax for the income year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributable to the Los Angeles

Revitalization Zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be that portion of the taxpayer's California source business income which is apportioned to the Los Angeles Revitalization Zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the Los Angeles Revitalization Zone in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17, modified as follows:

(A) Business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the income year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(C) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the income year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the income year.

(3) The portion of the credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the tax for the income year, as provided in subdivision (f).

(h) Except as provided in subparagraph (D) of paragraph (1) of subdivision (b), this section shall be inoperative on the first day of the income year beginning on or after the determination date, and each income year thereafter, with respect to the taxpayer's business activities within a geographic area that is excluded from the map pursuant to Section 7102 of the Government Code, or an excluded area determined pursuant to Section 7104 of the Government Code. The determination date is the earlier of the first effective date of a determination under subdivision (c) of Section 7102 of the Government Code occurring after December 1, 1994, or the first effective date of an exclusion of an area from the amended Los Angeles Revitalization Zone under Section 7104 of the Government Code. However, if the taxpayer has any unused credit amount as of the date this section becomes inoperative, that unused credit amount may continue to be carried forward as provided in subdivision (f).

(i) This section shall remain in effect only until December 1, 1998, and as of that date is repealed. However, any unused credit may continue to be carried forward, as specified in subdivision (f).

SEC. 19. Section 24345 of the Revenue and Taxation Code is amended to read:

24345. A deduction shall be allowed for taxes or licenses paid or accrued during the income year, except:

(a) Taxes paid to the state under this part.

(b) Taxes on or according to or measured by income or profits paid or accrued within the income year imposed by the authority of any of the following:

(1) The Government of the United States or any foreign country.

(2) Any state, territory, county, school district, municipality, or other taxing subdivision of any state or territory.

(c) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed, but this does not exclude the allowance as a deduction of so much of the taxes assessed against local benefits as is properly allocable to maintenance or interest charges. Nor does this exclude the allowance of any irrigation or other water district taxes or assessments which are levied for the payment of the principal of any improvement or other bonds for which a general assessment on all lands within the district is levied as distinguished from a special assessment levied on part of the area within the district.

(d) Federal stamp taxes (not described in subdivision (b) or (c)); but this subdivision shall not prevent such taxes from being deducted under Section 24343 (relating to trade or business expenses).

(e) State and local general sales or use taxes. However, there shall be allowed as a deduction, state and local sales or use taxes which are paid or accrued within the income year in carrying on a trade or business or an activity described in Section 212 of the Internal Revenue Code (relating to expenses for production of income). Notwithstanding the preceding sentence, any sales or use tax (except where a tax credit is claimed under Section 23612.2) which is paid or accrued by the taxpayer in connection with an acquisition or disposition of property shall be treated as part of the cost of the acquired property or, in the case of a disposition, as a reduction in the amount realized on the disposition.

(f) For purposes of subdivision (b), "taxes on or according to or measure by income" shall include any taxes imposed on a dividend that is eliminated from the income of the recipient under Section 25106.

SEC. 20. Section 24349.1 of the Revenue and Taxation Code is amended to read:

24349.1. (a) Section 280F of the Internal Revenue Code, relating to limitations on depreciation for luxury automobiles and certain property used for personal purposes, shall apply, except as otherwise provided.

(b) Except as provided in subdivision (c), Section 280F of the Internal Revenue Code shall be modified as follows:

(1) The terms "deduction" or "recovery deduction," relating to amounts allowable as a deduction under Section 168 of the Internal Revenue Code, mean the amount allowable as a deduction for depreciation under this part.

(2) The term "recovery period," relating to property under Section 168 of the Internal Revenue Code, means the class life asset depreciation range allowable under this part.

(3) The provisions of Section 280F of the Internal Revenue Code which relate to the investment tax credit shall not be applicable for purposes of this part.

(c) Paragraphs (1) and (2) of subdivision (b) shall not apply to Section 24356.7 property.

SEC. 21. Section 24356.5 of the Revenue and Taxation Code is amended to read:

24356.5. (a) Section 179A of the Internal Revenue Code, relating to deduction for clean-fuel vehicles and certain refueling property, shall apply to property placed in service after June 30, 1993, without regard to income year, except as otherwise provided.

(b) Section 179A(e)(5) of the Internal Revenue Code, relating to property used outside the United States, is modified to also refer to Section 24356.4 or 24356.7.

(c) Section 179A(g) of the Internal Revenue Code, relating to termination, is modified to substitute "December 31, 1994" for "December 31, 2004."

SEC. 22. Section 24356.7 of the Revenue and Taxation Code, as added by Section 26 of Chapter 953 of the Statutes of 1996, is repealed.

SEC. 23. Section 24384.5 of the Revenue and Taxation Code, as added by Section 28 of Chapter 953 of the Statutes of 1996, is repealed.

SEC. 24. Section 24422 of the Revenue and Taxation Code is amended to read:

24422. No deduction shall be allowed for both of the following:

(a) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate. This subdivision shall not apply to:

(1) Expenditures for the development of mines or deposits deductible under Section 616 of the Internal Revenue Code.

(2) Soil and water conservation expenditures deductible under Section 24369.

(3) Expenditures for farmers for fertilizer, etc., deductible under Section 24377.

(4) Research and experimental expenditures deductible under Section 24365.

(5) Expenditures for which a deduction is allowed under Section 24356.7.

(6) Expenditures for which a deduction is allowed under Section 24356.4.

(7) Expenditures for which a deduction is allowed under Section 24356.5.

(8) Expenditures for removal of architectural and transportation barriers to the handicapped and elderly that the taxpayer elects to deduct under Section 24383.

(b) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made.

SEC. 25. Section 24916 of the Revenue and Taxation Code is amended to read:

24916. Proper adjustment with regard to the property shall in all cases be made as follows:

(a) For expenditures, receipts, losses, or other items properly chargeable to capital account. However, no adjustment shall be made for any of the following:

(1) Sales or use tax paid or incurred in connection with the acquisition of property for which a tax credit is claimed pursuant to Section 23612.2.

(2) Taxes or other carrying charges described in Section 24426, or for expenditures described in Sections 24364 and 24369 for which deductions have been taken in determining net income for the income year or any prior income year.

(b) For exhaustion, wear and tear, obsolescence, amortization, and depletion:

(1) In the case of banks or corporations subject to the tax imposed by Chapter 2 (commencing with Section 23101), to the extent sustained prior to January 1, 1928, and to the extent allowed (but not less than the amount allowable) under this part, except that no deduction shall be made for amounts in excess of the amount which would have been allowable had depreciation not been computed on the basis of January 1, 1928, value and amounts in excess of the adjustments required by Section 113(b)(1)(B) of the Federal Revenue Act of 1938 for depletion prior to January 1, 1932.

(2) In the case of a taxpayer subject to the tax imposed by Chapter 3, to the extent sustained prior to January 1, 1937, and for periods thereafter to the extent allowed (but not less than the amount allowable) under the provisions of this part.

(3) If a taxpayer has not claimed an amortization deduction for an emergency facility, the adjustment under paragraph (1) shall be made only to the extent ordinarily provided under Sections 24349 and 24372.

(c) In the case of stock (to the extent not provided for in the foregoing subdivisions) for the amount of distributions previously made which, under the law applicable to the year in which the distribution was made, either were tax free or were applicable in reduction of basis (not including distributions made by a corporation, which was classified as a personal service corporation under the provisions of the Federal Revenue Act of 1918 or 1921, out of its

earnings or profits which were taxable in accordance with the provisions of Section 218 of the Federal Revenue Act of 1918 or 1921).

(d) (1) In the case of banks or corporations subject to the tax imposed by Chapter 2, in the case of any bond, as defined in Section 24363, to the extent of the deductions allowable pursuant to Section 24360 with respect thereto.

(2) In the case of taxpayers subject to the tax imposed by Chapter 3, in the case of any bond, as defined in Section 24363, the interest on which is wholly exempt from the tax imposed by this part, to the extent of the amortizable bond premium disallowable as a deduction pursuant to subdivision (b) of Section 24360, and in the case of any other bond, as defined in Section 24363, to the extent of the deductions allowable pursuant to subdivision (a) of Section 24360 (or the amount applied to reduce interest payments under paragraph (2) of subdivision (a) of Section 24363.5) with respect thereto.

(3) In the case of property pledged to the Commodity Credit Corporation, to the extent of the amount received as a loan from the Commodity Credit Corporation and treated by the taxpayer as income for the year in which received pursuant to Section 24273, and to the extent of any deficiency on that loan with respect to which the taxpayer has been relieved from liability.

(e) For amounts allowed as deductions as deferred expenses under Section 616(b) of the Internal Revenue Code, relating to certain expenditures in the development of mines, and resulting in a reduction of the taxpayer's tax, but not less than the amounts allowable under that section for the income year and prior years.

(f) For amounts allowable as deductions as deferred expenses under Section 617(a) of the Internal Revenue Code, relating to certain exploration expenditures, and resulting in a reduction of the taxpayer's tax, but not less than the amounts allowable under that section for the income year and prior years.

(g) For amounts allowed as deductions as deferred expenses under subdivision (a) of Section 24366, relating to research and experimental expenditures, and resulting in a reduction of the bank or corporations' taxes under this part, but not less than the amounts allowable under that section for the income year and prior years.

(h) For amounts allowed as deductions under Sections 24356.2, 24356.3, and 24356.4.

(i) (1) To the extent provided in Section 179A(e)(6)(A) of the Internal Revenue Code, relating to basis reduction for clean-fuel vehicles and certain refueling property.

(2) This subdivision shall apply to property placed in service after June 30, 1993, without regard to income year.

SEC. 26. It is the intent of the Legislature that the changes to the Personal Income Tax Law and the Bank and Corporation Tax Law made by this act shall be deemed to be in effect as of January 1, 1997, and for those purposes shall be given retroactive application.

SEC. 27. The Legislature finds and declares that this act fulfills a statewide public purpose because it provides for incentives for the economic development of depressed areas of the state.

SEC. 28. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 604

An act to amend Section 30 of the Business and Professions Code, to amend Section 1666.5 of the Insurance Code, to amend Section 1203.1d of the Penal Code, to amend Sections 17053.49, 17062, 17220, 17276.2, 17502, 17570, 17935, 18633, 18633.5, 19021, 19024, 19141.6, 19280, 19282, 19283, 19340, 23183.1, 23183.2, 23221, 23332, 23332.5, 23455, 23649, 23802, 23809, 23811, 24416.2, 24602, 24710, and 24918 of, to amend and renumber Section 19532 of, to amend and renumber the heading of Article 6 (commencing with Section 19280) of Chapter 5 of Part 10.2 of Division 2 of, to add Sections 17936, 23114, and 24954 to, and to repeal Sections 23184, 23184.5, 23185, 23185a, 23185b, and 24903 of, the Revenue and Taxation Code, to amend Section 1088.5 of the Unemployment Insurance Code, and to amend Section 56 of Chapter 952 of the Statutes of 1996, relating to taxation, and making an appropriation therefor, to take effect immediately, tax levy.

[Approved by Governor October 1, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Section 30 of the Business and Professions Code is amended to read:

30. (a) Notwithstanding any other provision of law, any board, as defined in Section 22, and the State Bar and the Department of Real Estate shall at the time of issuance or renewal of the license require that any licensee provide its federal employer identification number if the licensee is a partnership or his or her social security number for all others.

(b) Any licensee failing to provide the federal identification number or social security number shall be reported by the licensing board to the Franchise Tax Board and, if failing to provide after notification pursuant to paragraph (1) of subdivision (b) of Section 19528 of the Revenue and Taxation Code, shall be subject to the penalty provided in paragraph (2) of subdivision (b) of Section 19528 of the Revenue and Taxation Code.

(c) In addition to the penalty specified in subdivision (b), a licensing board may not process any application for an original license or for renewal of a license unless the applicant or licensee

provides its federal employer identification number or social security number where requested on the application.

(d) A licensing board shall, upon request of the Franchise Tax Board, furnish to the Franchise Tax Board the following information with respect to every licensee:

(1) Name.

(2) Address or addresses of record.

(3) Federal employer identification number if the entity is a partnership or social security number for all others.

(4) Type of license.

(5) Effective date of license or renewal.

(6) Expiration date of license.

(7) Whether license is active or inactive, if known.

(8) Whether license is new or renewal.

(e) For the purposes of this section:

(1) "Licensee" means any entity, other than a corporation, authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(2) "License" includes a certificate, registration, or any other authorization needed to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(3) "Licensing board" means any board, as defined in Section 22, the State Bar, and the Department of Real Estate.

(f) The reports required under this section shall be filed on magnetic media or in other machine-readable form, according to standards furnished by the Franchise Tax Board.

(g) Licensing boards shall provide to the Franchise Tax Board the information required by this section at a time that the Franchise Tax Board may require.

(h) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the social security number and federal employer identification number furnished pursuant to this section shall not be deemed to be a public record and shall not be open to the public for inspection.

(i) Any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a), or any former officer or employee or other individual who in the course of his or her employment or duty has or has had access to the information required to be furnished under this section, may not disclose or make known in any manner that information, except as provided in this section to the Franchise Tax Board or as provided in subdivision (k).

(j) It is the intent of the Legislature in enacting this section to utilize the social security account number or federal employer identification number for the purpose of establishing the identification of persons affected by state tax laws and for purposes of compliance with Section 11350.6 of the Welfare and Institutions

Code and, to that end, the information furnished pursuant to this section shall be used exclusively for those purposes.

(k) If the board utilizes a national examination to issue a license, and if a reciprocity agreement or comity exists between the State of California and the state requesting release of the social security number, any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a) may release a social security number to an examination or licensing entity, only for the purpose of verification of licensure or examination status.

SEC. 2. Section 1666.5 of the Insurance Code is amended to read:

1666.5. (a) Notwithstanding any other provision of law, the commissioner shall at the time of issuance or renewal of any license under this chapter or Chapter 6 (commencing with Section 1760), Chapter 7 (commencing with Section 1800), or Chapter 8 (commencing with Section 1831) require that any licensee provide its federal employer identification number if the licensee is a partnership or his or her social security number for all others.

(b) Any licensee failing to provide the federal identification number or social security number shall be reported by the commissioner to the Franchise Tax Board and, if failing to provide after notification pursuant to paragraph (1) of subdivision (b) of Section 19528 of the Revenue and Taxation Code, shall be subject to the penalty provided in paragraph (2) of subdivision (b) of Section 19528 of the Revenue and Taxation Code.

(c) The commissioner shall, upon request of the Franchise Tax Board, furnish to the board all of the following information with respect to every licensee:

(1) Licensee's name.

(2) Address or addresses of record.

(3) Federal employer identification number if the entity is a partnership or owner's name and social security number for all others.

(4) Type of license.

(5) Effective date of license or renewal.

(6) Expiration date of license.

(7) Whether license is active or inactive, if known.

(8) Whether license is new or renewal.

(d) For the purposes of this section:

(1) "Licensee" means any entity, other than a corporation, authorized by a license, certificate, registration, or other means to engage in the insurance business regulated by this code.

(2) "License" includes a certificate, registration, or any other authorization needed to engage in the insurance business regulated by this code.

(e) The reports required under this section shall be filed on magnetic media or in other machine-readable form, according to standards furnished by the Franchise Tax Board.

(f) The commissioner shall begin providing to the Franchise Tax Board the information required by this section as soon as economically feasible, but no later than July 1, 1987. The information shall be furnished at a time that the Franchise Tax Board may require.

(g) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the information furnished pursuant to this section shall not be deemed to be a public record and shall not be open to the public for inspection.

(h) Any deputy, agent, clerk, officer, or employee of the commissioner, or any former officer or employee or other individual who in the course of his or her employment or duty has or has had access to the information required to be furnished under this section, shall not disclose or make known in any manner that information, except as provided in this section to the Franchise Tax Board.

(i) It is the intent of the Legislature in enacting this section to utilize the social security account number or federal employer identification number for the purpose of establishing the identification of persons affected by state tax laws and, to that end, the information furnished pursuant to this section shall be used exclusively for tax enforcement purposes.

SEC. 3. Section 1203.1d of the Penal Code is amended to read:

1203.1d. In determining the amount and manner of disbursement under an order made pursuant to this code requiring a defendant to make reparation or restitution to a victim of a crime, to pay any money as reimbursement for legal assistance provided by the court, to pay any cost of probation or probation investigation, or to pay any cost of jail or other confinement, or to pay any other reimbursable costs, the court, after determining the amount of any fine and penalty assessments, and a county financial evaluation officer when making a financial evaluation, shall first determine the amount of restitution to be ordered paid to any victim, and shall then determine the amount of the other reimbursable costs.

If payment is made in full, the payment shall be apportioned and disbursed in the amounts ordered by the court.

If reasonable and compatible with the defendant's financial ability, the court may order payments to be made in installments.

With respect to installment payments and amounts collected by the Franchise Tax Board pursuant to Section 19280 of the Revenue and Taxation Code, the board of supervisors may establish the priorities of payment, first between fines, penalty assessments, and reparation or restitution, and then between other reimbursable costs. The board of supervisors may also establish priorities of payment between orders or parts of orders in cases where defendants have been ordered to pay more than one court order.

Documentary evidence, as bills, receipts, repair estimates, insurance payment statements, payroll stubs, business records, and similar documents relevant to the value of the stolen or damaged

property, medical expenses, and wages and profits lost shall not be excluded as hearsay evidence.

SEC. 3.5. Section 17053.49 of the Revenue and Taxation Code is amended to read:

17053.49. (a) (1) A qualified taxpayer shall be allowed a credit against the "net tax," as defined in Section 17039, equal to 6 percent of the qualified cost of qualified property that is placed in service in this state.

(2) In the case of any qualified costs paid or incurred on or after January 1, 1994, and prior to the first taxable year of the qualified taxpayer beginning on or after January 1, 1995, the credit provided under paragraph (1) shall be claimed by the qualified taxpayer on the qualified taxpayer's return for the first taxable year beginning on or after January 1, 1995. No credit shall be claimed under this section on a return filed for any taxable year commencing prior to the qualified taxpayer's first taxable year beginning on or after January 1, 1995.

(b) (1) For purposes of this section, "qualified cost" means any cost that satisfies each of the following conditions:

(A) Except as otherwise provided in this subparagraph, is a cost paid or incurred by the qualified taxpayer for the construction, reconstruction, or acquisition of qualified property on or after January 1, 1994, and prior to the date this section ceases to be operative under paragraph (2) of subdivision (i). In the case of any qualified property constructed, reconstructed, or acquired by the qualified taxpayer (or any person related to the qualified taxpayer within the meaning of Section 267 or 707 of the Internal Revenue Code) pursuant to a binding contract in existence on or prior to January 1, 1994, costs paid pursuant to that contract shall be subject to allocation as follows: contract costs shall be allocated to qualified property based on a ratio of costs actually paid prior to January 1, 1994, and total contract costs actually paid. "Cost paid" shall include, without limitation, contractual deposits and option payments. To the extent of costs allocated, whether or not currently deductible or depreciable for tax purposes, to a period prior to January 1, 1994, the cost shall be deemed allocated to property acquired before January 1, 1994, and is thus not a "qualified cost."

(B) Except as provided in paragraph (2) of subdivision (d) and subparagraph (B) of paragraph (3) of subdivision (d), is an amount upon which the qualified taxpayer has paid, directly or indirectly, as a separately stated contract amount or as determined from the records of the qualified taxpayer, sales or use tax under Part 1 (commencing with Section 6001).

(C) Is an amount properly chargeable to the capital account of the qualified taxpayer.

(2) (A) For purposes of this subdivision, any contract entered into on or after January 1, 1994, that is a successor or replacement contract to a contract that was binding prior to January 1, 1994, shall be treated as a binding contract in existence prior to January 1, 1994.

(B) If a successor or replacement contract is entered into on or after January 1, 1994, and the subject of the successor or replacement contract relates both to amounts for the construction, reconstruction, or acquisition of qualified property described in the original binding contract and to costs for the construction, reconstruction, or acquisition of qualified property not described in the original binding contract, then the portion of those amounts described in the successor or replacement contract that were not described in the original binding contract shall not be treated as costs paid or incurred pursuant to a binding contract in existence on or prior to January 1, 1994, under subparagraph (A) of paragraph (1).

(3) (A) For purposes of this section, an option contract in existence prior to January 1, 1994, under which a qualified taxpayer (or any other person related to the qualified taxpayer within the meaning of Section 267 or 707 of the Internal Revenue Code) had an option to acquire qualified property, shall be treated as a binding contract under the rules in paragraph (2). For purposes of this subparagraph, an option contract shall not include an option under which the option holder will forfeit an amount less than 10 percent of the fixed option price in the event the option is not exercised.

(B) For purposes of this section, a contract shall be treated as binding even if the contract is subject to a condition.

(c) (1) For purposes of this section, "qualified taxpayer" means any taxpayer or partnership engaged in those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(2) In the case of any passthrough entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section or Section 23649 shall be allowed to the passthrough entity and passed through to the partners or shareholders in accordance with applicable provisions of Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001). For purposes of this paragraph, the term "passthrough entity" means any partnership or S corporation.

(3) The Franchise Tax Board may prescribe regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the effect of this section through splitups, shell corporations, partnerships, tiered ownership structures, sale-leaseback transactions, or otherwise.

(d) For purposes of this section, "qualified property" means property that is described as either of the following:

(1) Tangible personal property that is defined in Section 1245(a) of the Internal Revenue Code for use by a qualified taxpayer in those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the

United States Office of Management and Budget, 1987 edition, that is primarily used for any of the following:

(A) For the manufacturing, processing, refining, fabricating, or recycling of property, beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the process and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling has altered tangible personal property to its completed form, including packaging, if required.

(B) In research and development.

(C) To maintain, repair, measure, or test any property described in this paragraph.

(D) For pollution control that meets or exceeds standards established by the state or by any local or regional governmental agency within the state.

(E) For recycling.

(2) The value of any capitalized labor costs that are directly allocable to the construction or modification of property described in paragraph (1).

(3) In the case of any qualified taxpayer engaged in manufacturing activities described in SIC Code 357 or 367, those activities related to biotechnology described in SIC Code 8731, those activities related to biopharmaceutical establishments only that are described in SIC Codes 2833 to 2836, inclusive, those activities related to space vehicles and parts described in SIC Codes 3761 to 3769, inclusive, those activities related to space satellites and communications satellites and equipment described in SIC Codes 3663 and 3812 (but only with respect to "qualified property" that is placed in service on or after January 1, 1996), or those activities related to semiconductor equipment manufacturing described in SIC Code 3559 (but only with respect to "qualified property" that is placed in service on or after January 1, 1997), "qualified property" also includes the following:

(A) Special purpose buildings and foundations that are constructed or modified for use by the qualified taxpayer primarily in a manufacturing, processing, refining, or fabricating process, or as a research or storage facility primarily used in connection with a manufacturing process.

(B) The value of any capitalized labor costs that are directly allocable to the construction or modification of special purpose buildings and foundations that are used primarily in the manufacturing, processing, refining, or fabricating process, or as a research or storage facility primarily used in connection with a manufacturing process.

(C) (i) For purposes of this paragraph, "special purpose building and foundation" means only a building and the foundation immediately underlying the building that is specifically designed and constructed or reconstructed for the installation, operation, and use

of specific machinery and equipment with a special purpose, which machinery and equipment, after installation, will become affixed to or a fixture of the real property, and the construction or reconstruction of which is specifically designed and used exclusively for the specified purposes as set forth in subparagraph (A) ("qualified purpose").

(ii) A building is specifically designed and constructed or modified for a qualified purpose if it is not economical to design and construct the building for the intended purpose and then use the structure for a different purpose.

(iii) For purposes of clause (i) and clause (vi), a building is used exclusively for a qualified purpose only if its use does not include a use for which it was not specifically designed and constructed or modified. Incidental use of a building for nonqualified purposes does not preclude the building from being a special purpose building. "Incidental use" means a use which is both related and subordinate to the qualified purpose. It will be conclusively presumed that a use is not subordinate if more than one-third of the total usable volume of the building is devoted to a use which is not a qualified purpose.

(iv) In the event an entire building does not qualify as a special purpose building, a taxpayer may establish that a portion of a building, and the foundation immediately underlying the portion, qualifies for treatment as a special purpose building and foundation if the portion satisfies all of the definitional provisions in this subparagraph.

(v) To the extent that a building is not a special purpose building as defined above, but a portion of the building qualifies for treatment as a special purpose building, then all equipment which exclusively supports the qualified purpose occurring within that portion and which would qualify as Internal Revenue Code Section 1245 property if it were not a fixture or affixed to the building shall be treated as a cost of the portion of the building which qualifies for treatment as a special purpose building.

(vi) Buildings and foundations which do not meet the definition of a special purpose building and foundation set forth above include, but are not limited to: buildings designed and constructed or reconstructed principally to function as a general purpose manufacturing, industrial, or commercial building; research facilities that are used primarily prior to or after, or prior to and after, the manufacturing process; or storage facilities that are used primarily prior to or after, or prior to and after, completion of the manufacturing process. A research facility shall not be considered to be used primarily prior to or after, or prior to and after, the manufacturing process if its purpose and use relate exclusively to the development and regulatory approval of the manufacturing process for specific biopharmaceutical products. A research facility which is used primarily in connection with the discovery of an organism from

which a biopharmaceutical product or process is developed does not meet the requirements of the preceding sentence.

(4) Subject to the provisions in subparagraph (B) of paragraph (1) of subdivision (b), qualified property also includes computer software that is primarily used for those purposes set forth in paragraph (1) of this subdivision.

(5) Qualified property does not include any of the following:

(A) Furniture.

(B) Facilities used for warehousing purposes after completion of the manufacturing process.

(C) Inventory.

(D) Equipment used in the extraction process.

(E) Equipment used to store finished products that have completed the manufacturing process.

(F) Any tangible personal property that is used in administration, general management, or marketing.

(G) Any vehicle for which a credit is claimed pursuant to Section 17052.11 or 23603.

(e) For purposes of this section:

(1) "Biopharmaceutical activities" means those activities which use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities which make use of chemical compounds to produce commercial products.

(2) "Fabricating" means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(3) "Manufacturing" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(4) "Other biotechnology activities" means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(5) "Primarily" means tangible personal property used 50 percent or more of the time in an activity described in subdivision (d).

(6) "Process" means the period beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer and ending at the point

at which the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer has altered tangible personal property to its completed form, including packaging, if required. Raw materials shall be considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified taxpayer's manufacturing, processing, refining, or recycling activity is conducted. Raw materials that are stored on premises other than where the qualified taxpayer's manufacturing, processing, refining, fabricating, or recycling activity is conducted, shall not be considered to have been introduced into the manufacturing, processing, refining, fabricating, or recycling process.

(7) "Processing" means the physical application of the materials and labor necessary to modify or change the characteristics of property.

(8) "Refining" means the process of converting a natural resource to an intermediate or finished product.

(9) "Research and development" means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.

(10) "Small business" means a qualified taxpayer that meets any of the following requirements during the taxable year for which the credit is allowed:

(A) Has gross receipts of less than fifty million dollars ($50,000,000).

(B) Has net assets of less than fifty million dollars ($50,000,000).

(C) Has a total credit of less than one million dollars ($1,000,000).

(D) For taxable years beginning on or after January 1, 1997, is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and has not received regulatory approval for any product from the United States Food and Drug Administration.

(f) The credit allowed under subdivision (a) shall apply to qualified property that is acquired by or subject to lease by a qualified taxpayer, subject to the following special rules:

(1) A lessor of qualified property, irrespective of whether the lessor is a qualified taxpayer, shall not be allowed the credit provided under subdivision (a) with respect to any qualified property leased to another qualified taxpayer.

(2) For purposes of paragraphs (2) and (3) of subdivision (b), "binding contract" shall include any lease agreement with respect to the qualified property.

(3) (A) For purposes of determining the qualified cost paid or incurred by a lessee in any leasing transaction that is not treated as a sale under Part 1 (commencing with Section 6001), the following rules shall apply:

(i) Except as provided by subparagraph (C) of this paragraph, subparagraphs (A) and (C) of paragraph (1) of subdivision (b) shall not apply.

(ii) Except as provided in subparagraph (B) and clause (iii), the "qualified cost" upon which the lessee shall compute the credit provided under this section shall be equal to the original cost to the lessor (within the meaning of Section 18031) of the qualified property that is the subject of the lease.

(iii) Except as provided in clause (iv), the requirement of subparagraph (B) of paragraph (1) of subdivision (b) shall be treated as satisfied only if the lessor has made a timely election under either Section 6094.1 or subdivision (d) of Section 6244 and has paid sales tax reimbursement or use tax measured by the purchase price of the qualified property (within the meaning of paragraph (5) of subdivision (g) of Section 6006). For purposes of this subdivision and clause (iv), the amount of original cost to the lessor which may be taken into account under clause (ii) shall not exceed the purchase price upon which sales tax reimbursement or use tax has been paid under the preceding sentence or under clause (iv).

(iv) With respect to leases entered into between January 1, 1994, and the effective date of this clause, the lessor may elect to pay use tax measured by the purchase price of the property by reporting and paying the tax with the return of the lessor for the fourth calendar quarter of 1994. In computing the use tax under the preceding sentence, a credit shall be allowed under Part 1 (commencing with Section 6001) for all sales or use tax previously paid on the lease.

(B) For purposes of applying subparagraph (A) only, the following special rules shall apply:

(i) The original cost to the lessor of the qualified property shall be reduced by the amount of any original cost of that property that was taken into account by any predecessor lessee in computing the credit allowable under this section.

(ii) Clause (i) shall not apply in any case where the predecessor lessee was required to recapture the credit provided under this section pursuant to the provisions of subdivision (g).

(iii) For purposes of this section only, in any case where a successor lessor has acquired qualified property from a predecessor lessor in a transaction not treated as a sale under Part 1 (commencing with Section 6001), the original cost to the successor lessor of the qualified property shall be reduced by the amount of the original cost of the qualified property that was taken into account by any lessee of the predecessor lessor in computing the credit allowable under this section.

(C) In determining the original cost of any qualified property under this paragraph, only amounts paid or incurred by the lessor on or after January 1, 1994, and prior to the date this section ceases to be operative under paragraph (2) of subdivision (i), shall be taken into account. In the case of any qualified property constructed,

reconstructed, or acquired by a lessor pursuant to a binding contract in existence on or prior to January 1, 1994, the allocation rule specified in subparagraph (A) of paragraph (1) of subdivision (b) shall apply in determining the original cost to the lessor of qualified property.

(D) Notwithstanding subparagraph (A), in the case of any leasing transaction for which the lessee is allowed the credit under this section and thereafter the lessee (or any party related to the lessee within the meaning of Section 267 or 318 of the Internal Revenue Code) acquires the qualified property from the lessor (or any successor lessor) within one year from the date the qualified property is first used by the lessee under the terms of the lease, the lessee's (or related party's) acquisition of the qualified property from the lessor (or successor lessor) shall be treated as a disposition by the lessee of the qualified property that was subject to the lease under subdivision (g).

(4) For purposes of determining the qualified cost paid or incurred by a lessee in any leasing transaction that is treated as a sale under Part 1 (commencing with Section 6001), the following rules shall apply:

(A) Subparagraph (A) of paragraph (1) of subdivision (b) shall be applied by substituting the term "purchase" for the term "construction, reconstruction, or acquisition."

(B) Subparagraph (C) of paragraph (1) of subdivision (b) shall apply.

(C) The requirement of subparagraph (B) of paragraph (1) of subdivision (b) shall be treated as satisfied at the time that either the lessor or the qualified taxpayer pays sales or use tax under Part 1 (commencing with Section 6001).

(5) (A) In the case of any leasing transaction described in paragraph (3), the lessor shall provide a statement to the lessee specifying the amount of the lessor's original cost of the qualified property and the amount of that cost upon which a sales or use tax was paid within 45 days after the close of the lessee's taxable year in which the credit is allowable to the lessee under this section.

(B) The statement required under subparagraph (A) shall be made available to the Franchise Tax Board upon request.

(g) No credit shall be allowed if the qualified property is removed from the state, is disposed of to an unrelated party, or is used for any purpose not qualifying for the credit provided in this section in the same taxable year in which the qualified property is first placed in service in this state. If any qualified property for which a credit is allowed pursuant to this section is thereafter removed from this state, disposed of to an unrelated party, or used for any purpose not qualifying for the credit provided in this section within one year from the date the qualified property is first placed in service in this state, the amount of the credit allowed by this section for that qualified property shall be recaptured by adding that credit amount to the net

tax of the qualified taxpayer for the taxable year in which the qualified property is disposed of, removed, or put to an ineligible use.

(h) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years as follows:

(1) Except as provided in paragraph (2), for the seven succeeding years if necessary, until the credit is exhausted.

(2) In the case of a small business, for the nine succeeding years, if necessary, until the credit is exhausted.

(i) (1) This section shall remain in effect until the date specified in paragraph (2), on which date this section shall cease to be operative, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (h), until the credit is exhausted.

(2) (A) This section shall cease to be operative on January 1, 2001, or on January 1 of the earliest year thereafter, if the total employment in this state, as determined by the Employment Development Department on the preceding January 1, does not exceed by 100,000 jobs the total employment in this state on January 1, 1994. The department shall report to the Legislature annually with respect to the determination required by the preceding sentence.

(B) For purposes of this paragraph, "total employment" means the total employment in the manufacturing sector, excluding employment in the aerospace sector.

(j) The amendments made by the act adding this subdivision shall be operative for taxable years beginning on or after January 1, 1997, except as provided in paragraph (3) of subdivision (d).

SEC. 4. Section 17062 of the Revenue and Taxation Code is amended to read:

17062. (a) In addition to the other taxes imposed by this part, there is hereby imposed for each taxable year, a tax equal to the excess, if any, of—

(1) The tentative minimum tax for the taxable year, over

(2) The regular tax for the taxable year.

(b) For purposes of this chapter, each of the following shall apply:

(1) The tentative minimum tax shall be computed in accordance with Sections 55 to 59, inclusive, of the Internal Revenue Code, except as otherwise provided in this part.

(2) The regular tax shall be the amount of tax imposed by Section 17041 or 17048, before reduction for any credits against the tax, less any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560.

(3) (A) The provisions of Section 55(b)(1) of the Internal Revenue Code shall be modified to provide that the tentative minimum tax for the taxable year shall be equal to the following percent of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount, before reduction for any credits against the tax:

(i) For any taxable year beginning on or after January 1, 1991, and before January 1, 1996, 8.5 percent.

(ii) For any taxable year beginning on or after January 1, 1996, 7 percent.

(B) In the case of a nonresident or part-year resident, the tentative minimum tax shall be computed as if the nonresident or part-year resident were a resident for the entire year multiplied by the ratio of California adjusted gross income (as modified for purposes of this chapter) to total adjusted gross income from all sources (as modified for purposes of this chapter). For purposes of computing the tax under subparagraph (A) and gross income from all sources, the net operating loss deduction provided in Section 56(d) of the Internal Revenue Code shall be computed as if the taxpayer were a resident for all prior years.

(C) For purposes of this section, the term "California adjusted gross income" includes each of the following:

(i) For any period during which the taxpayer was a resident of this state (as defined by Section 17014), all items of adjusted gross income (as modified for purposes of this chapter), regardless of source.

(ii) For any period during which the taxpayer was not a resident of this state, only those items of adjusted gross income (as modified for purposes of this chapter) which were derived from sources within this state, determined in accordance with Chapter 11 (commencing with Section 17951).

(4) The provisions of Section 55(b)(2) of the Internal Revenue Code, relating to alternative minimum taxable income, shall be modified to provide that alternative minimum taxable income shall not include the income, adjustments, and items of tax preference attributable to any trade or business of a qualified taxpayer.

(A) For purposes of this paragraph, "qualified taxpayer" means a taxpayer who meets both of the following:

(i) Is the owner of, or has an ownership interest in, a trade or business.

(ii) Has aggregate gross receipts, less returns and allowances, of less than one million dollars ($1,000,000) during the taxable year from all trades or businesses of which the taxpayer is the owner or has an ownership interest, in the amount of that taxpayer's proportionate interest in each trade or business.

(B) For purposes of this paragraph, "aggregate gross receipts, less returns and allowances" means the sum of the gross receipts of the trades or businesses which the taxpayer owns and the proportionate interest of the gross receipts of the trades or businesses which the taxpayer owns and of passthrough entities in which the taxpayer holds an interest.

(C) For purposes of this paragraph, "gross receipts, less returns and allowances" means the sum of the gross receipts from the production of business income, as defined in subdivision (a) of

Section 25120, and the gross receipts from the production of nonbusiness income, as defined in subdivision (d) of Section 25120.

(D) For purposes of this paragraph, "proportionate interest" means:

(i) In the case of a passthrough entity which reports a profit for the taxable or income year, the taxpayer's profit interest in the entity at the end of the taxpayer's taxable year.

(ii) In the case of a passthrough entity which reports a loss for the taxable or income year, the taxpayer's loss interest in the entity at the end of the taxpayer's taxable year.

(iii) In the case of a passthrough entity which is sold or liquidates during the taxable or income year, the taxpayer's capital account interest in the entity at the time of the sale or liquidation.

(E) (i) For purposes of this paragraph, "proportionate interest" includes an interest in a passthrough entity.

(ii) For purposes of this paragraph, "passthrough entity" means any of the following:

(I) A partnership, as defined by Section 17008.

(II) An S corporation, as provided in Chapter 4.5 (commencing with Section 23800) of Part 11.

(III) A regulated investment company, as provided in Section 24871.

(IV) A real estate investment trust, as provided in Section 24872.

(V) A real estate mortgage investment conduit, as provided in Section 24874.

(c) (1) Section 56(b)(1)(E) of the Internal Revenue Code, relating to standard deduction and deduction for personal exemptions not allowed, is modified, for purposes of this part, to deny the standard deduction allowed by Section 17073.5.

(2) Section 56(b)(3) of the Internal Revenue Code, relating to treatment of incentive stock options, shall be modified to additionally provide the following:

(A) Section 421 of the Internal Revenue Code shall not apply to the transfer of stock acquired pursuant to the exercise of a California qualified stock option under Section 17502.

(B) Section 422(c)(2) of the Internal Revenue Code shall apply in any case where the disposition and inclusion of a California qualified stock option for purposes of this chapter are within the same taxable year and that section shall not apply in any other case.

(C) The adjusted basis of any stock acquired by the exercise of a California qualified stock option shall be determined on the basis of the treatment prescribed by this paragraph.

(3) The provisions of Section 56(h) of the Internal Revenue Code, relating to adjustment based on energy preferences, shall not apply.

(d) The provisions of Section 57(a)(5) of the Internal Revenue Code, relating to tax-exempt interest shall not apply.

(e) The last two sentences of Section 57(a)(6)(B) of the Internal Revenue Code, relating to tangible personal property, shall not apply.

(f) Section 57(a) of the Internal Revenue Code, relating to items of tax preference, is modified to include as an item of tax preference an amount equal to one-half of the amount excluded from gross income for the taxable year under Section 18152.5.

(g) The provisions of Section 59(a) of the Internal Revenue Code, relating to the alternative minimum tax foreign tax credit, shall not apply.

SEC. 5. Section 17220 of the Revenue and Taxation Code is amended to read:

17220. (a) Section 164(a)(3) of the Internal Revenue Code, relating to the deductibility of state, local, and foreign income, war profits, and excess profits taxes, shall not apply.

(b) In addition to the provisions of Section 164(c) of the Internal Revenue Code, relating to deduction denied in case of certain taxes, no deduction shall be allowed for any tax imposed under Chapter 10.5 (commencing with Section 17935), Chapter 10.6 (commencing with Section 17941), or Chapter 10.7 (commencing with Section 17951) of this part or under Part 11 (commencing with Section 23001).

SEC. 6. Section 17276.2 of the Revenue and Taxation Code is amended to read:

17276.2. The term "qualified taxpayer" as used in Section 17276.1 means any of the following:

(a) A person or entity engaged in the conduct of a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(1) A net operating loss shall not be a net operating loss carryback to any taxable year and a net operating loss for any taxable year beginning on or after the date that the area in which the taxpayer conducts a trade or business is designated as an enterprise zone shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of loss.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the taxpayer's business activities within the enterprise zone (as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code) prior to the enterprise zone expiration date. That attributable loss shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section by substituting "enterprise zone" for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to the enterprise zone (as defined in Chapter 12.8 (commencing with

Section 7070) of Division 7 of Title 1 of the Government Code) determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section by substituting "enterprise zone" for "this state."

(C) If a loss carryover is allowable pursuant to this section for any taxable year after the enterprise zone designation has expired, the enterprise zone shall be deemed to remain in existence for purposes of computing the limitation set forth in subparagraph (B) and allowing a net operating loss deduction.

(D) "Enterprise zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(b) A person or entity engaged in the conduct of a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(1) A net operating loss shall not be a net operating loss carryback for any taxable year, and a net operating loss for any taxable year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated the Los Angeles Revitalization Zone shall be a net operating loss carryover to each following taxable year that ends before the Los Angeles Revitalization Zone expiration date or to each of the 15 taxable years following the taxable year of loss, if longer.

(2) For the purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the taxpayer's business activities within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) prior to the Los Angeles Revitalization Zone expiration date. The attributable loss shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified as follows:

(i) Loss shall be apportioned to the Los Angeles Revitalization Zone by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The Los Angeles Revitalization Zone" shall be substituted for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) determined in accordance with the provisions of paragraph (3).

(C) If a loss carryover is allowable pursuant to this section for any taxable year after the Los Angeles Revitalization Zone designation has expired, the Los Angeles Revitalization Zone shall be deemed to remain in existence for purposes of computing the limitation set forth in subparagraph (B) and allowing a net operating loss deduction.

(3) Attributable income shall be that portion of the taxpayer's California source business income which is apportioned to the Los Angeles Revitalization Zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11. That business income shall be further apportioned to the Los Angeles Revitalization Zone in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(A) Business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year.

(C) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the taxable year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the taxable year.

(4) "Los Angeles Revitalization Zone expiration date" means the date the Los Angeles Revitalization Zone designation expires, is repealed, or becomes inoperative pursuant to Section 7102, 7103, or 7104 of the Government Code.

(5) This subdivision shall be inoperative on the first day of the taxable year beginning on or after the determination date, and each taxable year thereafter, with respect to the taxpayer's business activities within a geographic area that is excluded from the map pursuant to Section 7102 of the Government Code, or an excluded area determined pursuant to Section 7104 of the Government Code. The determination date is the earlier of the first effective date of a determination under subdivision (c) of Section 7102 of the Government Code occurring after December 1, 1994, or the first effective date of an exclusion of an area from the amended Los Angeles Revitalization Zone under Section 7104 of the Government Code. However, if the taxpayer has any unused loss amount as of the date this section becomes inoperative, that unused loss amount may continue to be carried forward as provided in this subdivision.

(6) This subdivision shall cease to be operative on January 1, 1998. However, any unused net operating loss may continue to be carried over to following years as provided in this subdivision.

(c) For each taxable year beginning on or after January 1, 1995, and before January 1, 2003, a taxpayer engaged in the conduct of a trade or business within a LAMBRA.

(1) A net operating loss shall not be a net operating loss carryback for any taxable year, and a net operating loss for any taxable year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated a LAMBRA shall be a net operating loss carryover to each following taxable year that ends before the LAMBRA expiration date or to each of the 15 taxable years following the taxable year of loss, if longer.

(2) For the purposes of this subdivision:

(A) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(B) "Taxpayer" means a person or entity that conducts a trade or business within a LAMBRA and, for the first two taxable years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA and this state.

(i) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the taxable year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second taxable year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the taxable year prior to commencing business operations in the LAMBRA shall be zero. The deduction shall be allowed only if the taxpayer has a net increase in jobs in the state, and if one or more full-time employees is employed within the LAMBRA.

(ii) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(I) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(II) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(iii) In the case of a taxpayer who first commences doing business in the LAMBRA during the taxable year, for purposes of subclauses (I) and (II), respectively, of clause (ii) the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the taxable year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(C) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the taxpayer's business activities within a LAMBRA prior to the LAMBRA expiration date. The attributable loss shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified as follows:

(i) Loss shall be apportioned to a LAMBRA by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The LAMBRA" shall be substituted for "this state."

(D) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to a LAMBRA determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified as follows:

(i) Business income shall be apportioned to a LAMBRA by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The LAMBRA" shall be substituted for "this state."

(iii) If a loss carryover is allowable pursuant to this section for any taxable year after the LAMBRA designation has expired, the LAMBRA shall be deemed to remain in existence for purposes of computing this limitation.

(E) "LAMBRA expiration date" means the date the LAMBRA designation expires, is no longer binding, or becomes inoperative pursuant to Section 7110 of the Government Code.

(d) A taxpayer who qualifies as a "qualified taxpayer" shall, for the taxable year of the net operating loss and any taxable year to which that net operating loss may be carried, designate on the original return filed for each year the subdivision of this section which applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one subdivision of this section, the designation is to be made after taking into account subdivision (e).

(e) If a taxpayer is eligible to qualify under more than one subdivision of this section as a "qualified taxpayer," with respect to a net operating loss in a taxable year, the taxpayer shall designate which subdivision of this section is to apply to the taxpayer.

(f) Notwithstanding Section 17276, the amount of the loss determined under this section shall be the only net operating loss allowed to be carried over from that taxable year and the designation under subdivision (d) shall be included in the election under Section 17276.1.

SEC. 7. Section 17502 of the Revenue and Taxation Code is amended to read:

17502. (a) In addition to the application of Part II (commencing with Section 421) of Subchapter D of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to certain stock options, paragraphs (1), (2), and (3) of Section 421(a) of the Internal Revenue Code shall also apply to any California qualified stock option that is granted to an individual whose earned income from the corporation granting the California qualified stock option for the taxable year in which that option is exercised does not exceed forty thousand dollars ($40,000).

In the event that the option does not meet the necessary qualifications, the option shall be treated as a nonqualified stock option.

(b) For purposes of this section, "California qualified stock option" means a stock option that is issued and exercised pursuant to this section and that is designated by the corporation issuing the option as a California qualified stock option at the time the option is granted.

(c) (1) This section shall apply only to those stock options that are issued on or after January 1, 1997, and before January 1, 2002, by a corporation to its employee and are exercised by the employee, while employed by the corporation that issued those stock options (or within three months thereof, or within one year thereof if permanently and totally disabled as defined in Section 22(e)(3) of the Internal Revenue Code), during the taxable year with respect to any class of shares, or combination thereof, issued by the corporation, to the extent that the number of shares transferable by the exercise of the options does not exceed a total of 1,000 and have a combined fair market value of less than one hundred thousand dollars ($100,000). The combined fair market value of any stock shall be determined as of the time the option with respect to that stock is granted.

(2) Paragraph (1) shall be applied by taking options into account in the order in which they were granted.

(d) In the case of a California qualified stock option, no amount shall be included in the gross income of the employee until the time of the disposition of the option (or the stock acquired upon exercise of the option).

No deduction shall be allowed under Section 162 of the Internal Revenue Code to the employer on the grant or exercise of a California qualified stock option.

(e) Subdivision (d) shall not apply to any stock option for which an election has been made under Section 83(b) of the Internal Revenue Code, relating to election to include in gross income in year of transfer.

SEC. 8. Section 17570 of the Revenue and Taxation Code is amended to read:

17570. (a) For each taxable year beginning on or after January 1, 1997, Section 475 of the Internal Revenue Code, relating to mark to market accounting method for securities dealers, as added by Section 13223 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), shall apply, except as otherwise provided.

(b) Section 13233(c)(2)(C) of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to the effective date for changes in the mark to market accounting method for securities dealers, is modified to provide that the amount taken into account under Section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably

over the five-taxable-year period beginning with the first taxable year beginning on or after January 1, 1997.

SEC. 9. Section 17935 of the Revenue and Taxation Code is amended to read:

17935. (a) For each taxable year beginning on or after January 1, 1997, every limited partnership doing business in this state (as defined by Section 23101) and required to file a return under Section 18633 shall pay annually to this state a tax for the privilege of doing business in this state in an amount equal to the applicable amount specified in Section 23153.

(b) In addition to any limited partnership that is doing business in this state and therefore is subject to the tax imposed by subdivision (a), for each taxable year beginning on or after January 1, 1997, every limited partnership that has executed, acknowledged, and filed a certificate of limited partnership with the Secretary of State pursuant to Section 15621 of the Corporations Code, and every foreign limited partnership that has registered with the Secretary of State pursuant to Section 15692 of the Corporations Code, shall pay annually the tax prescribed in subdivision (a). The tax shall be paid for each taxable year, or part thereof, until a certificate of cancellation is filed on behalf of the limited partnership with the office of the Secretary of State pursuant to Section 15623 or 15696 of the Corporations Code.

(c) The tax imposed under this section shall be due and payable on the date the return is required to be filed under former Section 18432 or Section 18633.

(d) For purposes of this section, "limited partnership" means any partnership formed by two or more persons under the laws of this state or any other jurisdiction and having one or more general partners and one or more limited partners.

SEC. 10. Section 17936 is added to the Revenue and Taxation Code, to read:

17936. A limited partnership shall not be subject to the taxes imposed by this chapter if the limited partnership did no business in this state during the taxable year and the taxable year was 15 days or less.

SEC. 11. Section 18633 of the Revenue and Taxation Code is amended to read:

18633. (a) (1) Every partnership, within three months and 15 days after the close of its taxable year, shall make a return for that taxable year, stating specifically the items of gross income and the deductions allowed by Part 10 (commencing with Section 17001). Except as otherwise provided in Section 18621.5, the return shall include the names, addresses, and taxpayer identification numbers of the persons, whether residents or nonresidents, who would be entitled to share in the net income if distributed and the amount of the distributive share of each person. The return shall contain or be verified by a written declaration that it is made under the penalties of perjury, signed by one of the partners.

(2) In addition to returns required by paragraph (1), every limited partnership subject to the tax imposed by subdivision (b) of Section 17935 or 23081, within three months and 15 days after the close of its taxable year, shall make a return for that year. In the case of a limited partnership not doing business in this state, the Franchise Tax Board shall prescribe the manner and extent to which the information identified in paragraph (1) shall be included with the return required by this paragraph.

(b) Each partnership required to file a return under subdivision (a) for any taxable year shall (on or before the day on which the return for that taxable year was required to be filed) furnish to each person who is a partner or who holds an interest in that partnership as a nominee for another person at any time during that taxable year a copy of that information required to be shown on that return as may be required by regulations.

(c) Any person who holds an interest in a partnership as a nominee for another person shall do both of the following:

(1) Furnish to the partnership, in the manner prescribed by the Franchise Tax Board, the name, address, and taxpayer identification number of that other person, and any other information for that taxable year as the Franchise Tax Board may by form and regulation prescribe.

(2) Furnish to that other person, in the manner prescribed by the Franchise Tax Board, the information provided by that partnership under subdivision (b).

(d) The provisions of Section 6031(d) of the Internal Revenue Code, relating to the separate statement of items of unrelated business taxable income, shall apply.

(e) The amendments made to this section by the act adding this subdivision shall apply to returns required to be filed under subdivision (a) after the effective date of that act.

(f) The amendments made to this section by the act adding this subdivision shall apply to returns required to be filed on or after January 1, 1998.

SEC. 12. Section 18633.5 of the Revenue and Taxation Code is amended to read:

18633.5. (a) Every limited liability company which is classified as a partnership for California tax purposes that is doing business in this state, organized in this state, or registered with the Secretary of State shall file its return within three months and 15 days after the close of its taxable or income year, shall make a return for that taxable year, stating specifically the items of gross income and the deductions allowed by Part 10 (commencing with Section 17001). The return shall include the names, addresses, and taxpayer identification numbers of the persons, whether residents or nonresidents, who would be entitled to share in the net income if distributed and the amount of the distributive share of each person. The return shall contain or be verified by a written declaration that it is made under

the penalties of perjury, signed by one of the limited liability company members. In the case of a limited liability company not doing business in this state and subject to the tax imposed by subdivision (b) of Section 17941 or 23091, the Franchise Tax Board shall prescribe the manner and extent to which the information identified in this subdivision shall be included with the return required by this subdivision.

(b) Each limited liability company required to file a return under subdivision (a) for any limited liability company taxable or income year shall, on or before the day on which the return for that taxable or income year was required to be filed, furnish to each person who holds an interest in that limited liability company at any time during that taxable or income year a copy of that information required to be shown on that return as may be required by forms and instructions prescribed by the Franchise Tax Board.

(c) Any person who holds an interest in a limited liability company as a nominee for another person shall do both of the following:

(1) Furnish to the limited liability company, in the manner prescribed by the Franchise Tax Board, the name, address, and taxpayer identification number of that person, and any other information for that taxable or income year as the Franchise Tax Board may prescribe by forms and instructions.

(2) Furnish to that other person, in the manner prescribed by the Franchise Tax Board, the information provided by that limited liability company under subdivision (b).

(d) The provisions of Section 6031(d) of the Internal Revenue Code, relating to the separate statement of items of unrelated business taxable income, shall apply.

(e) (1) A limited liability company shall file with its return required under subdivision (a), in the form required by the Franchise Tax Board, the agreement of each nonresident member to file a return pursuant to Section 18501, to make timely payment of all taxes imposed on the member by this state with respect to the income of the limited liability company, and to be subject to personal jurisdiction in this state for purposes of the collection of income taxes, together with related interest and penalties, imposed on the member by this state with respect to the income of the limited liability company. If the limited liability company fails timely to file the agreements on behalf of each of its nonresident members, then the limited liability company shall, at the time set forth in subdivision (f), pay to this state on behalf of each nonresident member of whom an agreement has not been timely filed an amount equal to the highest marginal tax rate in effect under Section 17041 in the case of members which are individuals, estates, or trusts, and Section 23151 in the case of members which are corporations, multiplied by the amount of the member's distributive share of the income source to the state reflected on the limited liability company's return for the taxable period. A limited liability company shall be entitled to

recover the payment made from the member on whose behalf the payment was made.

(2) If a limited liability company fails to attach the agreement or to timely pay the payment required by paragraph (1), the payment shall be considered the tax of the limited liability company for purposes of the penalty prescribed by Section 19132 and interest prescribed by Section 19101 for failure to timely pay tax. Payment of the penalty and interest imposed on the limited liability company for failure to timely pay the amount required by this subdivision shall extinguish the liability of a nonresident member for the penalty and interest for failure to make timely payment of all taxes imposed on that member by this state with respect to the income of the limited liability company.

(3) No penalty or interest shall be imposed on the limited liability company under paragraph (2) if the nonresident member timely files and pays all taxes imposed on the member by this state with respect to the income of the limited liability company.

(f) Any agreement of a nonresident member required to be filed pursuant to subdivision (e) shall be filed at either of the following times:

(1) The time the annual return is required to be filed pursuant to this section for the first taxable period for which the limited liability company became subject to tax pursuant to Chapter 1.6 (commencing with Section 23091).

(2) The time the annual return is required to be filed pursuant to this section for any taxable period in which the limited liability company had a nonresident member on whose behalf the agreement has not been previously filed.

(g) Any amount paid by the limited liability company to this state pursuant to paragraph (1) of subdivision (e) shall be considered to be a payment by the member on account of the income tax imposed by this state on the member for the taxable period.

(h) Every limited liability company that is classified as a corporation for California tax purposes shall be subject to the requirement to file a tax return under the provisions of Part 10.2 (commencing with Section 18401) and subject to the applicable taxes imposed by Part 11 (commencing with Section 23001), including Section 23221, relating to the prepayment of the minimum tax to the Secretary of State.

(i) The amendments made to this section by the act adding this subdivision shall apply to returns required to be filed on or after January 1, 1998.

SEC. 13. Section 19021 of the Revenue and Taxation Code is amended to read:

19021. In the case of taxpayers subject to the tax imposed by Article 3 (commencing with Section 23181) of Chapter 2 of Part 11, there shall be due and payable on or before the 15th day of the third month following the close of the preceding year from each taxpayer

a percentage of its net income as disclosed by its return which is equal to the rate applicable to corporations subject to the tax imposed by Article 2 (commencing with Section 23151) of Chapter 2 of Part 11 plus the personal property tax rate equivalent included in the bank and financial corporation tax rate determination by the Franchise Tax Board pursuant to Sections 23186 and 23186.1. The payment required by this section shall not be less than the minimum tax specified in Section 23153.

SEC. 14. Section 19024 of the Revenue and Taxation Code is amended to read:

19024. (a) In the case of banks and financial corporations, "estimated tax" means the amount which the bank or financial corporation estimates as the amount of the tax imposed by Part 11 (commencing with Section 23001) at the rate determined by the Franchise Tax Board for the preceding year pursuant to Section 23186.1, but in no event shall the estimated tax of a financial corporation be less than the minimum tax prescribed in Section 23153.

(b) In case of an increase or decrease in the rate of tax imposed under Section 23151 (tax on general corporations), a bank or financial corporation shall be required to increase or decrease the rate determined by the Franchise Tax Board for the preceding year by the same amount as the change in the rate imposed under Section 23151 determined in accordance with Section 24251 (relating to computation of tax when law changed).

SEC. 15. Section 19141.6 of the Revenue and Taxation Code is amended to read:

19141.6. (a) Each taxpayer determining its income subject to tax pursuant to Section 25101 or electing to file pursuant to Section 25110 shall, for income years beginning on or after January 1, 1994, maintain (in the location, in the manner, and to the extent prescribed in regulations which shall be promulgated by the Franchise Tax Board on or before December 31, 1995) and make available upon request all of the following:

(1) Any records as may be appropriate to determine the correct treatment of the components that are a part of one or more unitary businesses for purposes of determining the income derived from or attributable to this state pursuant to Section 25101 or 25110.

(2) Any records as may be appropriate to determine the correct treatment of amounts that are attributable to the classification of an item as business or nonbusiness income for purposes of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(3) Any records as may be appropriate to determine the correct treatment of the apportionment factors for purposes of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(4) Documents and information, including any questionnaires completed and submitted to the Internal Revenue Service that are necessary to audit issues involving attribution of income to the

United States or foreign jurisdictions under Section 882, Subpart F (commencing with Section 951) of, Part III (commencing with Section 901) of Subchapter N, or similar sections, of the Internal Revenue Code.

(b) For purposes of this section:

(1) Information for any year shall be retained for that period of time in which the taxpayers' income or franchise tax liability to this state may be subject to adjustment, including all periods in which additional income or franchise taxes may be assessed, not to exceed eight years from the due date or extended due date of the return, or during which a protest is pending before the Franchise Tax Board, or an appeal is pending before the State Board of Equalization or a lawsuit is pending in the courts of this state or the United States with respect to California franchise or income tax.

(2) "Related party" means banks and corporations that are related because one owns or controls directly or indirectly more than 50 percent of the stock of the other or because more than 50 percent of the voting stock of each is owned or controlled, directly or indirectly, by the same interests.

(3) "Records" includes any books, papers, or other data.

(c) (1) If a bank or corporation subject to this section fails to maintain or fails to cause another to maintain records as required by subdivision (a), that bank or corporation shall pay a penalty of ten thousand dollars ($10,000) for each income year with respect to which the failure occurs.

(2) If any failure described in paragraph (1) continues for more than 90 days after the day on which the Franchise Tax Board mails notice of the failure to the bank or corporation, that bank or corporation shall pay a penalty (in addition to the amount required under paragraph (1)) of ten thousand dollars ($10,000) for each 30-day period (or fraction thereof) during which the failure continues after the expiration of the 90-day period. The additional penalty imposed by this subdivision shall not exceed a maximum of fifty thousand dollars ($50,000) if the failure to maintain or the failure to cause another to maintain is not willful. This maximum shall apply with respect to income years beginning on or after January 1, 1994, and before the earlier of the first day of the month following the month in which regulations are adopted pursuant to this section or December 31, 1995.

(3) For purposes of this section, the time prescribed by regulations to maintain records (and the beginning of the 90-day period after notice by the Franchise Tax Board) shall be treated as not earlier than the last day on which (as shown to the satisfaction of the Franchise Tax Board) reasonable cause existed for failure to maintain the records.

(d) (1) The Franchise Tax Board may apply the rules of paragraph (2) whether or not the board begins a proceeding to

enforce a subpoena or subpoena duces tecum, if subparagraphs (A), (B), and (C) apply:

(A) For purposes of determining the correct treatment under Part 11 (commencing with Section 23001) of the items described in subdivision (a), the Franchise Tax Board issues a subpoena or subpoena duces tecum to a bank or corporation to produce (either directly or as agent for the related party) any records or testimony.

(B) The subpoena or subpoena duces tecum is not quashed in a proceeding begun under paragraph (3) and is not determined to be invalid in a proceeding begun under Section 19504 to enforce the subpoena or subpoena duces tecum.

(C) The bank or corporation does not substantially comply in a timely manner with the subpoena or subpoena duces tecum and the Franchise Tax Board has sent by certified or registered mail a notice to that bank or corporation that it has not substantially complied.

(D) If the bank or corporation fails to maintain or fails to cause another to maintain records as required by subdivision (a), and by reason of that failure, the subpoena or subpoena duces tecum is quashed in a proceeding described in subparagraph (B) or the bank or corporation is not able to provide the records requested in the subpoena or subpoena duces tecum, the Franchise Tax Board may apply the rules of paragraph (2) to any of the items described in subdivision (a) to which the records relate.

(2) (A) All of the following shall be determined by the Franchise Tax Board in the Franchise Tax Board's sole discretion from the Franchise Tax Board's own knowledge or from information the Franchise Tax Board may obtain through testimony or otherwise:

(i) The components that are a part of one or more unitary businesses for purposes of determining the income derived from or attributable to this state pursuant to Section 25101 or 25110.

(ii) Amounts that are attributable to the classification of an item as business or nonbusiness income for purposes of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(iii) The apportionment factors for purposes of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(iv) The correct amount of income under Section 882 of, Subpart F (commencing with Section 951) of, Part III (commencing with Section 901) of Subchapter N of, or similar sections of, the Internal Revenue Code.

(B) This paragraph shall apply to determine the correct treatment of the items described in subdivision (a) unless the bank or corporation is authorized by its related parties (in the manner and at the time as the Franchise Tax Board shall prescribe) to act as the related parties' limited agent solely for purposes of applying Section 19504 with respect to any request by the Franchise Tax Board to examine records or produce testimony related to any item described in subdivision (a) or with respect to any subpoena or subpoena duces tecum for the records or testimony. The appearance of persons or the

production of records by reason of the bank or corporation being an agent shall not subject those persons or records to legal process for any purpose other than determining the correct treatment under Part 11 of the items described in subdivision (a).

(C) Determinations made in the sole discretion of the Franchise Tax Board pursuant to this paragraph may be appealed to the State Board of Equalization, in the manner and at a time, as provided by Section 19045 or 19324, or may be the subject of an action to recover tax, in the manner and at a time, as provided by Section 19382. The review of determinations by the board or the court shall be limited to whether the determinations were arbitrary or capricious, or are not supported by substantial evidence.

(3) (A) Notwithstanding any other law or rule of law, any reporting bank or corporation to which the Franchise Tax Board issues a subpoena or subpoena duces tecum referred to in subparagraph (A) of paragraph (1) shall have the right to begin a proceeding to quash the subpoena or subpoena duces tecum not later than the 90th day after the subpoena or subpoena duces tecum was issued. In that proceeding, the Franchise Tax Board may seek to compel compliance with the subpoena or subpoena duces tecum.

(B) Notwithstanding any other law or rule of law, any reporting bank or corporation that has been notified by the Franchise Tax Board that it has determined that the bank or corporation has not substantially complied with a subpoena or subpoena duces tecum referred to in paragraph (1) shall have the right to begin a proceeding to review the determination not later than the 90th day after the day on which the notice referred to in subparagraph (C) of paragraph (1) was mailed. If the proceeding is not begun on or before the 90th day, the determination by the Franchise Tax Board shall be binding and shall not be reviewed by any court.

(C) The superior courts of the State of California for the Counties of Los Angeles, Sacramento, and San Diego, and for the City and County of San Francisco shall have jurisdiction to hear any proceeding brought under subparagraphs (A) and (B). Any order or other determination in the proceeding shall be treated as a final order that may be appealed.

(D) If any bank or corporation takes any action as provided in subparagraphs (A) and (B), the running of any period of limitations under Sections 19057 to 19064, inclusive (relating to the assessment and collection of tax), or under Section 19704 (relating to criminal prosecutions) with respect to that bank or corporation shall be suspended for the period during which the proceedings, and appeals therein, are pending. In no event shall any period expire before the 90th day after the day on which there is a final determination in the proceeding.

SEC. 16. The heading of Article 6 (commencing with Section 19280) of Chapter 5 of Part 10.2 of Division 2 of the Revenue and Taxation Code is amended and renumbered to read:

Article 5.5. Collection of Amounts Imposed by a Court

SEC. 17. Section 19280 of the Revenue and Taxation Code is amended to read:

19280. (a) (1) Fines, state or local penalties, forfeitures, restitution fines, restitution orders, or any other amounts imposed by a superior, municipal, or justice court of the State of California upon a person or any other entity that is due and payable in an amount totaling no less than two hundred fifty dollars ($250), in the aggregate, for criminal offenses, including all offenses involving a violation of the Vehicle Code except offenses relating to parking or registration or offenses by pedestrians or bicyclists, may, no sooner than 90 days after payment of that amount becomes delinquent, be referred by the county or the state to the Franchise Tax Board for collection under guidelines prescribed by the Franchise Tax Board.

(2) For purposes of this subdivision:

(A) The amounts referred by the county or state under this section may include any amounts that a government entity may add to the court imposed obligation as a result of the underlying offense, trial, or conviction. For purposes of this article, those amounts shall be deemed to be imposed by the court.

(B) Restitution orders may be referred to the Franchise Tax Board only by a government entity, as agreed upon by the Franchise Tax Board, provided that all of the following apply:

(i) The government entity has the authority to collect on behalf of the state or the victim.

(ii) The government entity shall be responsible for distributing the restitution order collections, as appropriate.

(iii) The government entity shall ensure, in making the referrals and distributions, that it coordinates with any other related collection activities that may occur by counties or other state agencies.

(iv) The government entity shall ensure compliance with laws relating to the reimbursement of the State Restitution Fund.

(C) The Franchise Tax Board shall establish criteria for referral, which shall include setting forth a minimum dollar amount subject to referral and collection.

(b) For the period January 1, 1995, to December 31, 1997, inclusive, for purposes of a manageable implementation and evaluation of the program authorized by this article, the Franchise Tax Board may limit referrals to nine counties.

(c) Upon written notice to the obligor from the Franchise Tax Board, any amount referred to the Franchise Tax Board under subdivision (a) and any interest thereon, including any interest on the amount referred under subdivision (a) that accrued prior to the date of referral, shall be treated as final and due and payable to the State of California, and shall be collected from the obligor by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent personal income tax liability, including, but

not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(d) (1) Part 10 (commencing with Section 18401), this part, Part 10.7 (commencing with Section 21001), and Part 11 (commencing with Section 23001) shall apply to amounts referred under this article in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that any provision is either inconsistent with this article or is not relevant to this article.

(2) Any information, information sources, or enforcement remedies and capabilities available to the court or the state referring the amount due described in subdivision (a), shall be available to the Franchise Tax Board to be used in conjunction with, or independent of, the information, information sources, or remedies and capabilities available to the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 18401), this part, Part 10.7 (commencing with Section 21001), or Part 11 (commencing with Section 23001).

(e) The activities required to implement and administer this part shall not interfere with the primary mission of the Franchise Tax Board to administer Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001).

(f) For amounts referred for collection under subdivision (a), interest shall accrue at the greater of the rate applicable to the amount due being collected or the rate provided under Section 19521. When notice of the amount due includes interest and is mailed to the obligor and the amount is paid within 15 days after the date of notice, interest shall not be imposed for the period after the date of notice.

(g) In no event shall a collection under this article be construed as a payment of income taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

SEC. 18. Section 19282 of the Revenue and Taxation Code is amended to read:

19282. (a) Except as otherwise provided in subdivision (e), amounts collected under this article shall be transmitted to the Treasurer and deposited in the State Treasury to the credit of the Court Collection Account in the General Fund, which is hereby created. Amounts deposited in the Court Collection Account shall, less an amount that is equal to the costs incurred by the Franchise Tax Board in administering the program authorized by this article, be transferred by the Controller either to the county or to the state fund to which the amount due was originally owing or as otherwise directed by contractual agreement. If the amount collected is not sufficient to satisfy the amounts referred for collection pursuant to Section 19280 that are to be paid by an offender, then the amount paid

shall be allocated for distribution on a pro rata basis, as defined in subdivision (d), except in counties where the board of supervisors has established a priority of payment for amounts collected under this article pursuant to Section 1203.1d of the Penal Code. The amount that is equal to the costs incurred by the Franchise Tax Board in administering the program authorized by this article shall be transferred by the Controller to the General Fund for the purpose of recovering the amount expended by the Franchise Tax Board from General Fund appropriations for the purpose of implementing and administering the program authorized by this article, and related statutes as added or amended by the act adding this article.

(b) It is the intent of the Legislature that costs to the Franchise Tax Board to administer this article for the 1997–98 fiscal year and each fiscal year thereafter not exceed 15 percent of the amount it collects pursuant to this article.

(c) Notwithstanding Section 13340 of the Government Code, all moneys deposited in the Court Collection Account pursuant to this section are hereby continuously appropriated, without regard to fiscal years, for purposes of making distributions pursuant to subdivision (a).

(d) For purposes of this section, "pro rata basis" means a distribution determined as follows: the sum of the amounts referred for collection pursuant to Section 19280 to be paid by an offender shall be allocated and distributed in the same proportion that each of the elements has to the sum.

(e) For amounts collected pursuant to a restitution fine or restitution order, subdivision (a) is modified to require the deposit and disbursement of funds collected under this article to be in accordance with the laws relating to reimbursement of the State Restitution Fund.

SEC. 19. Section 19283 of the Revenue and Taxation Code is amended to read:

19283. This article shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends this date.

SEC. 19.3. Section 19340 of the Revenue and Taxation Code is amended to read:

19340. Interest shall be allowed and paid on any overpayment in respect of any tax, at the adjusted annual rate established pursuant to Section 19521, as follows:

(a) In the case of a credit, from the date of the overpayment to the due date of the amount for which the credit is allowed. Any interest allowed on any credit shall first be credited on any amounts due from the taxpayer under Part 10 (commencing with Section 17001), this part, or Part 11 (commencing with Section 23001).

(b) In the case of a refund, including a refund in excess of tax liability as prescribed in subdivision (j) of Section 17053.5, from the date of the overpayment to a date preceding the date of the refund

warrant by not more than 30 days, the date to be determined by the Franchise Tax Board.

SEC. 20. Section 19532 of the Revenue and Taxation Code, as amended by Chapter 1001 of the Statutes of 1996, is amended and renumbered to read:

19533. In the event the debtor has more than one debt being collected by the Franchise Tax Board and the amount collected by the Franchise Tax Board is insufficient to satisfy the total amount owing, the amount collected shall be applied in the following priority:

(a) Payment of any taxes, additions to tax, penalties, interest, fees, or other amounts due and payable under Part 7.5 (commencing with Section 13201), Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(b) Payment of any debts referred for collection under Article 5 (commencing with Section 19271) of Chapter 5.

(c) Payment of delinquent wages collected pursuant to the Labor Code.

(d) Payment of delinquencies collected under Section 10878.

(e) Payment of any amounts due that are referred for collection under Article 5.5 (commencing with Section 19280) of Chapter 5.

(f) Payment of any amounts that are referred for collection pursuant to Section 62.9 of the Labor Code.

(g) Payment of delinquent penalties collected for the Department of Industrial Relations pursuant to the Labor Code.

(h) Payment of delinquent fees collected for the Department of Industrial Relations pursuant to the Labor Code.

(i) Payment of delinquencies referred by the Student Aid Commission pursuant to Section 16583.5 of the Government Code.

(j) Notwithstanding the payment priority established by this section, voluntary payments made by an obligated parent for a child support delinquency pursuant to subparagraph (B) of paragraph (1) of subdivision (b) of Section 19271 shall not be applied pursuant to this priority but shall instead be applied solely to the child support delinquency for which the voluntary payment was made.

SEC. 21. Section 23114 is added to the Revenue and Taxation Code, to read:

23114. A corporation shall not be subject to the taxes imposed by this chapter if the corporation did no business in this state during the income year and the income year was 15 days or less.

SEC. 22. Section 23183.1 of the Revenue and Taxation Code is amended to read:

23183.1. Notwithstanding Section 23183, every financial corporation doing business within the limits of this state and not exempted from taxation by the Constitution of this state or by this part, shall annually pay to the state for the privilege of exercising its corporate franchises within this state, a tax determined as follows:

(a) If a financial corporation commences to do business and ceases doing business in the same taxable year, the tax for that taxable year

shall be according to or measured by its net income for that year, at the rate provided under Section 23186.

(b) With respect to taxable years other than the year of commencement described in subdivision (a) or the year of cessation described in subdivision (c), a tax according to or measured by its net income, to be computed at the rate prescribed in Section 23186 upon the basis of its net income for the next preceding income year.

(c) With respect to financial corporations, which cease doing business in a taxable year other than those described in subdivision (a), the tax for the taxable year of cessation shall be:

(1) According to or measured by its net income for the next preceding income year to be computed at the rate prescribed in Section 23186, plus

(2) According to or measured by its net income for the income year during which the financial corporation ceased doing business, to be computed at the rate prescribed in Section 23186.

SEC. 23. Section 23183.2 of the Revenue and Taxation Code is amended to read:

23183.2. Notwithstanding Section 23183, every financial corporation not exempted from taxation by the provisions of the Constitution of this state or by this part which dissolves or withdraws, shall pay a tax for its taxable year of dissolution or withdrawal according to or measured by its net income for the income year in which it ceased doing business, to be computed at the rate prescribed in Section 23186 for its taxable year of dissolution or withdrawal, unless the income has previously been included in the measure of tax for any taxable year.

SEC. 24. Section 23184 of the Revenue and Taxation Code is repealed.

SEC. 25. Section 23184.5 of the Revenue and Taxation Code is repealed.

SEC. 26. Section 23185 of the Revenue and Taxation Code is repealed.

SEC. 27. Section 23185a of the Revenue and Taxation Code is repealed.

SEC. 28. Section 23185b of the Revenue and Taxation Code is repealed.

SEC. 29. Section 23221 of the Revenue and Taxation Code is amended to read:

23221. (a) Except as provided under subdivision (b), a corporation which incorporates under the laws of this state or qualifies to transact intrastate business in this state shall thereupon prepay the minimum tax provided in Section 23153, except that any credit union shall thereupon prepay a tax of twenty-five dollars ($25). The prepayment shall be made to the Secretary of State with the filing of the articles of incorporation or the statement and designation by a foreign corporation. The Secretary of State shall transmit the amount of the prepayment to the Franchise Tax Board. The

Franchise Tax Board shall certify to the Secretary of State on an individual or class basis those domestic or foreign corporations which are exempt from prepayment or for which prepayment to the Secretary of State is waived.

(b) For income years commencing on or after January 1, 1997, the amount payable by a qualified new corporation under subdivision (a) shall be six hundred dollars ($600).

(c) For purposes of this section, "qualified new corporation" means a corporation that reasonably estimates that, for the income year, it will have both gross receipts, less returns and allowances reportable to this state, of one million dollars ($1,000,000) or less and a tax liability under Section 23151 that does not exceed eight hundred dollars ($800).

(1) The determination of gross receipts of a corporation, for purposes of this section, shall be made by including the gross receipts of each member of the commonly controlled group, as defined in Section 25105, of which the bank or corporation is a member.

(2) "Gross receipts, less returns and allowances reportable to this state" means the sum of the gross receipts from the production of business income, as defined in subdivision (a) of Section 25120, and the gross receipts from the production of nonbusiness income, as defined in subdivision (d) of Section 25120.

(d) Subdivision (b) shall not apply to any corporation if 50 percent or more of its stock is, or will be upon the initial issuance of stock, owned by another corporation.

(e) For income years commencing on or after January 1, 1997, if a corporation paid six hundred dollars ($600) under subdivision (b), but for its first income year the corporation's tax liability under Section 23151 exceeds eight hundred dollars ($800), or the corporation's gross receipts, as determined under paragraph (2) of subdivision (c), exceed one million dollars ($1,000,000), an additional tax in the amount equal to two hundred dollars ($200) shall be due and payable by the corporation on the due date of its return, without regard to extension, for its first income year.

SEC. 30. Section 23332 of the Revenue and Taxation Code is amended to read:

23332. (a) Except in the case of a taxpayer subject to the provisions of Section 23222a, any taxpayer which is dissolved or withdraws from the state during any taxable year shall pay a tax only for the months of the taxable year which precede the effective date of the dissolution or withdrawal, according to or measured by (1) the net income of the preceding income year or (2) a percentage of net income determined by ascertaining the ratio which the months of the taxable year, preceding the effective date of dissolution or withdrawal, bears to the months of the income year, whichever is the lesser amount. The taxes levied under this chapter shall not be subject to abatement or refund because of the cessation of business or corporate existence of any taxpayer pursuant to a reorganization,

consolidation, or merger (as defined by Section 23251). In any event, each corporation shall pay a tax not subject to offset for the period in an amount equal to the minimum tax prescribed by Section 23153.

(b) The provisions of subdivision (a) shall be applied only with respect to taxpayers which dissolve or withdraw before January 1, 1973. On and after that date, the tax for the taxable year in which the taxpayer ceases doing business, dissolves or withdraws shall be determined under the appropriate provisions of Section 23151.1, 23153, 23181, or 23183, whichever is applicable. However, if all of the following conditions are satisfied, a minimum franchise tax shall not be imposed with respect to the taxable year in which a tax clearance certificate is issued by the Franchise Tax Board:

(1) The taxpayer does not do business in this state at any time during that taxable year.

(2) The taxpayer files a certificate of dissolution with the Secretary of State prior to the beginning of that taxable year, in accordance with Section 1905 of the Corporations Code.

SEC. 31. Section 23332.5 of the Revenue and Taxation Code is amended to read:

23332.5. If a financial corporation ceases doing business, dissolves, or withdraws from the state during any taxable year, the tax for the taxable year during which cessation of doing business, dissolution or withdrawal occurs shall be computed as prescribed by subdivision (b) or (d) of Section 23183, 23183.1, or 23183.2.

SEC. 32. Section 23455 of the Revenue and Taxation Code is amended to read:

23455. For purposes of this part, Section 55 of the Internal Revenue Code is modified as follows:

(a) Section 55(b)(1) of the Internal Revenue Code, relating to tentative minimum tax, is modified by requiring the tentative minimum tax for the taxable year to be imposed as follows:

(1) With respect to corporations subject to tax under Chapter 2 (commencing with Section 23101), other than financial corporations, according to or measured by net income, for the privilege of doing business within this state, at a rate of 7 percent upon the basis of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount.

(2) With respect to corporations subject to tax under Chapter 3 (commencing with Section 23501), on net income from sources within this state, at a rate of 7 percent upon the basis of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount.

(3) With respect to organizations or trusts subject to tax under Article 2 (commencing with Section 23731) of Chapter 4, on the unrelated business income from sources within this state, at a rate of 7 percent upon the basis of so much of the alternative taxable income for the taxable year as exceeds the exemption amount.

(4) With respect to banks subject to tax under Section 23181, according to or measured by net income, for the privilege of doing business within this state, in an amount equal to the sum of the following:

(A) At a rate of 7 percent upon the basis of so much of the alternative minimum taxable income as exceeds the exemption amount.

(B) At the rate determined under Section 23186, less the rate prescribed by Section 23151, upon the basis of net income for the taxable year.

(5) With respect to financial corporations subject to tax under Section 23183, according to or measured by net income, for the privilege of doing business within this state, in an amount equal to the sum of the following:

(A) At a rate of 7 percent upon the basis of so much of the alternative minimum taxable income as exceeds the exemption amount.

(B) At the rate determined under Section 23186, less the rate prescribed by Section 23151, upon the basis of net income for the taxable year.

(b) Section 55(b)(2) of the Internal Revenue Code, relating to the definition of alternative minimum taxable income, is modified as follows:

(1) For corporations whose net income is determined under Chapter 17 (commencing with Section 25101), alternative minimum taxable income shall be allocated and apportioned in the same manner as net income is allocated and apportioned for purposes of the regular tax.

(2) With respect to taxpayers subject to Article 4 (commencing with Section 23221) of Chapter 2, Article 4 (commencing with Section 23221) to Article 9 (commencing with Section 23361), inclusive, shall apply to the tax imposed by this section except that Section 23221 shall not apply.

(3) For purposes of computing the alternative minimum tax for taxable years in which a taxpayer commenced doing business, dissolves, withdraws, or ceases doing business, Sections 18601, 23151, 23151.1, 23151.2, 23181, 23183, 23183.1, 23183.2, 23201 to 23204, inclusive, 23222 to 23224.5, inclusive, 23282, 23332.5, and 23504 shall be applied with due regard for the rate and alternative minimum taxable income prescribed by this chapter.

(c) Section 55(c) of the Internal Revenue Code, relating to the definition of regular tax, is modified to read:

(1) For purposes of this chapter, "regular tax" means the amount of tax imposed under Chapter 2 (commencing with Section 23101) or Chapter 3 (commencing with Section 23501) or Article 2 (commencing with Section 23731) of Chapter 4, but does not include any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.

(2) The tax specified in paragraph (1) shall be the amount determined prior to reduction by any credits against the tax.

(d) The rate of 7 percent prescribed in subdivision (a) shall be 6.65 percent for any income year beginning on or after January 1, 1997. The change in rate provided in this subdivision shall be made without proration otherwise required by Section 24251.

SEC. 33. Section 23649 of the Revenue and Taxation Code is amended to read:

23649. (a) (1) A qualified taxpayer shall be allowed a credit against the "tax," as defined in Section 23036, equal to 6 percent of the qualified cost of qualified property that is placed in service in this state.

(2) In the case of any qualified costs paid or incurred on or after January 1, 1994, and prior to the first income year of the qualified taxpayer beginning on or after January 1, 1995, the credit provided under paragraph (1) shall be claimed by the qualified taxpayer on the qualified taxpayer's return for the first income year beginning on or after January 1, 1995. No credit shall be claimed under this section on a return filed for any income year commencing prior to the qualified taxpayer's first income year beginning on or after January 1, 1995.

(b) (1) For purposes of this section, "qualified cost" means any cost that satisfies each of the following conditions:

(A) Except as otherwise provided in this subparagraph, is a cost paid or incurred by the qualified taxpayer for the construction, reconstruction, or acquisition of qualified property on or after January 1, 1994, and prior to the date this section ceases to be operative under paragraph (2) of subdivision (i). In the case of any qualified property constructed, reconstructed, or acquired by the qualified taxpayer (or any person related to the qualified taxpayer within the meaning of Section 267 or 707 of the Internal Revenue Code) pursuant to a binding contract in existence on or prior to January 1, 1994, costs paid pursuant to that contract shall be subject to allocation as follows: contract costs shall be allocated to qualified property based on a ratio of costs actually paid prior to January 1, 1994, and total contract costs actually paid. "Cost paid" shall include, without limitation, contractual deposits and option payments. To the extent of cost allocated, whether or not currently deductible or depreciable for tax purposes, to a period prior to January 1, 1994, the cost shall be deemed allocated to property acquired before January 1, 1994, and is thus not a "qualified cost."

(B) Except as provided in paragraph (2) of subdivision (d) and subparagraph (B) of paragraph (3) of subdivision (d), is an amount upon which the qualified taxpayer has paid, directly or indirectly, as a separately stated contract amount or as determined from the records of the qualified taxpayer, sales or use tax under Part 1 (commencing with Section 6001).

(C) Is an amount properly chargeable to the capital account of the qualified taxpayer.

(2) (A) For purposes of this subdivision, any contract entered into on or after January 1, 1994, that is a successor or replacement contract to a contract that was binding prior to January 1, 1994, shall be treated as a binding contract in existence prior to January 1, 1994.

(B) If a successor or replacement contract is entered into on or after January 1, 1994, and the subject of the successor or replacement contract relates both to amounts for the construction, reconstruction, or acquisition of qualified property described in the original binding contract and to costs for the construction, reconstruction, or acquisition of qualified property not described in the original binding contract, then the portion of those amounts described in the successor or replacement contract that were not described in the original binding contract shall not be treated as costs paid or incurred pursuant to a binding contract in existence on or prior to January 1, 1994, under subparagraph (A) of paragraph (1).

(3) (A) For purposes of this section, an option contract in existence prior to January 1, 1994, under which a qualified taxpayer (or any other person related to the qualified taxpayer within the meaning of Section 267 or 707 of the Internal Revenue Code) had an option to acquire qualified property, shall be treated as a binding contract under the rules in paragraph (2). For purposes of this subparagraph, an option contract shall not include an option under which the option holder will forfeit an amount less than 10 percent of the fixed option price in the event the option is not exercised.

(B) For purposes of this section, a contract shall be treated as binding even if the contract is subject to a condition.

(c) (1) For purposes of this section, "qualified taxpayer" means any taxpayer engaged in those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(2) In the case of any passthrough entity, the determination of whether a taxpayer is a qualified taxpayer shall be made at the entity level and any credit under this section or Section 17053.49 shall be allowed to the passthrough entity and passed through to the partners or shareholders in accordance with applicable provisions of Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001). For purposes of this paragraph, the term "passthrough entity" means any partnership or S corporation.

(3) The Franchise Tax Board may prescribe regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the effect of this section through splitups, shell corporations, partnerships, tiered ownership structures, sale-leaseback transactions, or otherwise.

(d) For purposes of this section, "qualified property" means property that is described as either of the following:

(1) Tangible personal property that is defined in Section 1245(a) of the Internal Revenue Code for use by a qualified taxpayer in those

lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, that is primarily used for any of the following:

(A) For the manufacturing, processing, refining, fabricating, or recycling of property, beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the process and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling has altered tangible personal property to its completed form, including packaging, if required.

(B) In research and development.

(C) To maintain, repair, measure, or test any property described in this paragraph.

(D) For pollution control that meets or exceeds standards established by the state or by any local or regional governmental agency within the state.

(E) For recycling.

(2) The value of any capitalized labor costs that are directly allocable to the construction or modification of property described in paragraph (1).

(3) In the case of any qualified taxpayer engaged in manufacturing activities described in SIC Code 357 or 367, those activities related to biotechnology described in SIC Code 8731, those activities related to biopharmaceutical establishments only that are described in SIC Codes 2833 to 2836, inclusive, those activities related to space vehicles and parts described in SIC Codes 3761 to 3769, inclusive, those activities related to space satellites and communications satellites and equipment described in SIC Codes 3663 and 3812 (but only with respect to "qualified property" that is placed in service on or after January 1, 1996), or those activities related to semiconductor equipment manufacturing described in SIC Code 3559 (but only with respect to "qualified property" that is placed in service on or after January 1, 1997), "qualified property" also includes the following:

(A) Special purpose buildings and foundations that are constructed or modified for use by the qualified taxpayer primarily in a manufacturing, processing, refining, or fabricating process, or as a research or storage facility primarily used in connection with a manufacturing process.

(B) The value of any capitalized labor costs that are directly allocable to the construction or modification of special purpose buildings and foundations that are used primarily in the manufacturing, processing, refining, or fabricating process, or as a research or storage facility primarily used in connection with a manufacturing process.

(C) (i) For purposes of this paragraph, "special purpose building and foundation" means only a building and the foundation

immediately underlying the building that is specifically designed and constructed or reconstructed for the installation, operation, and use of specific machinery and equipment with a special purpose, which machinery and equipment, after installation, will become affixed to or a fixture of the real property, and the construction or reconstruction of which is specifically designed and used exclusively for the specified purposes as set forth in subparagraph (A) ("qualified purpose").

(ii) A building is specifically designed and constructed or modified for a qualified purpose if it is not economical to design and construct the building for the intended purpose and then use the structure for a different purpose.

(iii) For purposes of clause (i) and clause (vi), a building is used exclusively for a qualified purpose only if its use does not include a use for which it was not specifically designed and constructed or modified. Incidental use of a building for nonqualified purposes does not preclude the building from being a special purpose building. "Incidental use" means a use which is both related and subordinate to the qualified purpose. It will be conclusively presumed that a use is not subordinate if more than one-third of the total usable volume of the building is devoted to a use which is not a qualified purpose.

(iv) In the event an entire building does not qualify as a special purpose building, a taxpayer may establish that a portion of a building, and the foundation immediately underlying the portion, qualifies for treatment as a special purpose building and foundation if the portion satisfies all of the definitional provisions in this subparagraph.

(v) To the extent that a building is not a special purpose building as defined above, but a portion of the building qualifies for treatment as a special purpose building, then all equipment which exclusively supports the qualified purpose occurring within that portion and which would qualify as Internal Revenue Code Section 1245 property if it were not a fixture or affixed to the building shall be treated as a cost of the portion of the building which qualifies for treatment as a special purpose building.

(vi) Buildings and foundations which do not meet the definition of a special purpose building and foundation set forth above include, but are not limited to: buildings designed and constructed or reconstructed principally to function as a general purpose manufacturing, industrial, or commercial building; research facilities that are used primarily prior to or after, or prior to and after, the manufacturing process; or storage facilities that are used primarily prior to or after, or prior to and after, completion of the manufacturing process. A research facility shall not be considered to be used primarily prior to or after, or prior to and after, the manufacturing process if its purpose and use relate exclusively to the development and regulatory approval of the manufacturing process for specific biopharmaceutical products. A research facility which is

used primarily in connection with the discovery of an organism from which a biopharmaceutical product or process is developed does not meet the requirements of the preceding sentence.

(4) Subject to the provisions in subparagraph (B) of paragraph (1) of subdivision (b), qualified property also includes computer software that is primarily used for those purposes set forth in paragraph (1) of this subdivision.

(5) Qualified property does not include any of the following:

(A) Furniture.

(B) Facilities used for warehousing purposes after completion of the manufacturing process.

(C) Inventory.

(D) Equipment used in the extraction process.

(E) Equipment used to store finished products that have completed the manufacturing process.

(F) Any tangible personal property that is used in administration, general management, or marketing.

(G) Any vehicle for which a credit is claimed pursuant to Section 17052.11 or 23603.

(e) For purposes of this section:

(1) "Biopharmaceutical activities" means those activities which use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities which make use of chemical compounds to produce commercial products.

(2) "Fabricating" means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(3) "Manufacturing" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(4) "Other biotechnology activities" means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(5) "Primarily" means tangible personal property used 50 percent or more of the time in an activity described in subdivision (d).

(6) "Process" means the period beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the manufacturing, processing, refining, fabricating,

or recycling activity of the qualified person and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer has altered tangible personal property to its completed form, including packaging, if required. Raw materials shall be considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified taxpayer's manufacturing, processing, refining, fabricating, or recycling activity is conducted. Raw materials that are stored on premises other than where the qualified taxpayer's manufacturing, processing, refining, fabricating, or recycling activity is conducted, shall not be considered to have been introduced into the manufacturing, processing, refining, fabricating, or recycling process.

(7) "Processing" means the physical application of the materials and labor necessary to modify or change the characteristics of property.

(8) "Refining" means the process of converting a natural resource to an intermediate or finished product.

(9) "Research and development" means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.

(10) "Small business" means a qualified taxpayer that meets any of the following requirements during the income year for which the credit is allowed:

(A) Has gross receipts of less than fifty million dollars ($50,000,000).

(B) Has net assets of less than fifty million dollars ($50,000,000).

(C) Has a total credit of less than one million dollars ($1,000,000).

(D) For income years beginning on or after January 1, 1997, is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and has not received regulatory approval for any product from the United States Food and Drug Administration.

(f) The credit allowed under subdivision (a) shall apply to qualified property that is acquired by or subject to lease by a qualified taxpayer, subject to the following special rules:

(1) A lessor of qualified property, irrespective of whether the lessor is a qualified taxpayer, shall not be allowed the credit provided under subdivision (a) with respect to any qualified property leased to another qualified taxpayer.

(2) For purposes of paragraphs (2) and (3) of subdivision (b), "binding contract" shall include any lease agreement with respect to the qualified property.

(3) (A) For purposes of determining the qualified cost paid or incurred by a lessee in any leasing transaction that is not treated as

a sale under Part 1 (commencing with Section 6001), the following rules shall apply:

(i) Except as provided by subparagraph (C) of this paragraph, subparagraphs (A) and (C) of paragraph (1) of subdivision (b) shall not apply.

(ii) Except as provided in subparagraph (B) and clause (iii), the "qualified cost" upon which the lessee shall compute the credit provided under this section shall be equal to the original cost to the lessor (within the meaning of Section 24912) of the qualified property that is the subject of the lease.

(iii) Except as provided in clause (iv), the requirement of subparagraph (B) of paragraph (1) of subdivision (b) shall be treated as satisfied only if the lessor has made a timely election under either Section 6094.1 or subdivision (d) of Section 6244 and has paid sales tax reimbursement or use tax measured by the purchase price of the qualified property (within the meaning of paragraph (5) of subdivision (g) of Section 6006). For purposes of this subdivision and clause (iv), the amount of original cost to the lessor which may be taken into account under clause (ii) shall not exceed the purchase price upon which sales tax reimbursement or use tax has been paid under the preceding sentence or under clause (iv).

(iv) With respect to leases entered into between January 1, 1994, and the effective date of this clause, the lessor may elect to pay use tax measured by the purchase price of the property by reporting and paying the tax with the return of the lessor for the fourth calendar quarter of 1994. In computing the use tax under the preceding sentence, a credit shall be allowed under Part 1 (commencing with Section 6001) for all sales or use tax previously paid on the lease.

(B) For purposes of applying subparagraph (A) only, the following special rules shall apply:

(i) The original cost to the lessor of the qualified property shall be reduced by the amount of any original cost of that property that was taken into account by any predecessor lessee in computing the credit allowable under this section.

(ii) Clause (i) shall not apply in any case where the predecessor lessee was required to recapture the credit provided under this section pursuant to the provisions of subdivision (g).

(iii) For purposes of this section only, in any case where a successor lessor has acquired qualified property from a predecessor lessor in a transaction not treated as a sale under Part 1 (commencing with Section 6001), the original cost to the successor lessor of the qualified property shall be reduced by the amount of the original cost of the qualified property that was taken into account by any lessee of the predecessor lessor in computing the credit allowable under this section.

(C) In determining the original cost of any qualified property under this paragraph, only amounts paid or incurred by the lessor on or after January 1, 1994, and prior to the date this section ceases to be

operative under paragraph (2) of subdivision (i), shall be taken into account. In the case of any qualified property constructed, reconstructed, or acquired by a lessor pursuant to a binding contract in existence on or prior to January 1, 1994, the allocation rule specified in subparagraph (A) of paragraph (1) of subdivision (b) shall apply in determining the original cost to the lessor of qualified property.

(D) Notwithstanding subparagraph (A), in the case of any leasing transaction for which the lessee is allowed the credit under this section and thereafter the lessee (or any party related to the lessee within the meaning of Section 267 or 318 of the Internal Revenue Code) acquires the qualified property from the lessor (or any successor lessor) within one year from the date the qualified property is first used by the lessee under the terms of the lease, the lessee's (or related party's) acquisition of the qualified property from the lessor (or successor lessor) shall be treated as a disposition by the lessee of the qualified property that was subject to the lease under subdivision (g).

(4) For purposes of determining the qualified cost paid or incurred by a lessee in any leasing transaction that is treated as a sale under Part 1 (commencing with Section 6001), the following rules shall apply:

(A) Subparagraph (A) of paragraph (1) of subdivision (b) shall be applied by substituting the term "purchase" for the term "construction, reconstruction, or acquisition."

(B) Subparagraph (C) of paragraph (1) of subdivision (b) shall apply.

(C) The requirement of subparagraph (B) of paragraph (1) of subdivision (b) shall be treated as satisfied at the time that either the lessor or the qualified taxpayer pays sales or use tax under Part 1 (commencing with Section 6001).

(5) (A) In the case of any leasing transaction described in paragraph (3), the lessor shall provide a statement to the lessee specifying the amount of the lessor's original cost of the qualified property and the amount of that cost upon which a sales or use tax was paid within 45 days after the close of the lessee's taxable year in which the credit is allowable to the lessee under this section.

(B) The statement required under subparagraph (A) shall be made available to the Franchise Tax Board upon request.

(g) No credit shall be allowed if the qualified property is removed from the state, is disposed of to an unrelated party, or is used for any purpose not qualifying for the credit provided in this section in the same taxable year in which the qualified property is first placed in service in this state. If any qualified property for which a credit is allowed pursuant to this section is thereafter removed from this state, disposed of to an unrelated party, or used for any purpose not qualifying for the credit provided in this section within one year from the date the qualified property is first placed in service in this state, the amount of the credit allowed by this section for that qualified

property shall be recaptured by adding that credit amount to the net tax of the qualified taxpayer for the taxable year in which the qualified property is disposed of, removed, or put to an ineligible use.

(h) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years as follows:

(1) Except as provided in paragraph (2), for the seven succeeding years if necessary, until the credit is exhausted.

(2) In the case of a small business, for the nine succeeding years, if necessary, until the credit is exhausted.

(i) (1) This section shall remain in effect until the date specified in paragraph (2) on which date this section shall cease to be operative, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (h), until the credit is exhausted.

(2) (A) This section shall cease to be operative on January 1, 2001, or on January 1 of the earliest year thereafter, if the total employment in this state, as determined by the Employment Development Department on the preceding January 1, does not exceed by 100,000 jobs the total employment in this state on January 1, 1994. The department shall report to the Legislature annually with respect to the determination required by the preceding sentence.

(B) For purposes of this paragraph, "total employment" means the total employment in the manufacturing sector, excluding employment in the aerospace sector.

(j) The amendments made by the act adding this subdivision shall be operative for income years beginning on or after January 1, 1997, except as provided in paragraph (3) of subdivision (d).

SEC. 34. Section 23802 of the Revenue and Taxation Code is amended to read:

23802. (a) Section 1363(a) of the Internal Revenue Code, relating to the taxability of an S corporation, shall not be applicable.

(b) Corporations qualifying under this chapter shall continue to be subject to the taxes imposed under Chapter 2 (commencing with Section 23101) and Chapter 3 (commencing with Section 23501), except as follows:

(1) The tax imposed under Section 23151 or 23501 shall be imposed at a rate of $1^1/_2$ percent rather than the rate specified in those sections.

(2) In the case of an "S corporation" which is also a financial corporation, the rate of tax specified in paragraph (1) shall be increased by the excess of the rate imposed under Section 23183 over the rate imposed under Section 23151.

(c) An "S corporation" shall be subject to the minimum franchise tax imposed under Section 23153.

(d) (1) For purposes of subdivision (b), an "S corporation" shall be allowed a deduction under Section 24416 or 24416.1 (relating to net operating loss deductions), but only with respect to losses

incurred during periods in which the corporation had in effect a valid election to be treated as an "S corporation" for purposes of this part.

(2) Section 1371(b) of the Internal Revenue Code, relating to denial of carryovers between "C years" and "S years," shall apply for purposes of the tax imposed under subdivision (b), except as provided in paragraph (1).

(3) The provisions of this subdivision shall not affect the amount of any item of income or loss computed in accordance with the provisions of Section 1366 of the Internal Revenue Code, relating to passthrough items to shareholders.

(4) For purposes of subdivision (b) of Section 17276, relating to limitations on loss carryovers, losses passed through to shareholders of an "S corporation," to the extent otherwise allowable without application of that subdivision, shall be fully included in the net operating loss of that shareholder and then that subdivision shall be applied to the entire net operating loss.

(e) For purposes of computing the taxes specified in subdivision (b), an "S corporation" shall be allowed a deduction from income for built-in gains and passive investment income for which a tax has been imposed under this part in accordance with the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, or Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income.

(f) For purposes of computing taxes imposed under this part, as provided in subdivision (b)—

(1) An "S corporation" shall compute its deductions for amortization and depreciation in accordance with the provisions of Part 10 (commencing with Section 17001) of Division 2.

(2) The provisions of Section 465 of the Internal Revenue Code, relating to limitation of deductions to the amount at risk, shall be applied in the same manner as in the case of an individual.

(3) (A) The provisions of Section 469 of the Internal Revenue Code, relating to limitations on passive activity losses and credits, shall be applied in the same manner as in the case of an individual. For purposes of the tax imposed under Section 23151 or 23501, as modified by this section, material participation shall be determined in accordance with Section 469(h) of the Internal Revenue Code, relating to certain closely held "C corporations" and personal service corporations.

(B) For purposes of this paragraph, the "adjusted gross income" of the "S corporation" shall be equal to its "net income," as determined under Section 24341 with the modifications required by this subdivision, except that no deduction shall be allowed for contributions allowed by Section 24357.

(4) The exclusion provided under Section 18152.5 shall not be allowed to an "S corporation."

(g) The provisions of Section 1363(d) of the Internal Revenue Code, relating to recapture of LIFO benefits, shall be modified for

purposes of this part to refer to Section 19102 in lieu of Section 6601 of the Internal Revenue Code.

SEC. 35. Section 23809 of the Revenue and Taxation Code is amended to read:

23809. There is hereby imposed a tax on built-in gains attributable to California sources, determined in accordance with the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, as modified by this section.

(a) (1) The rate of tax specified in Section 1374(b)(1) of the Internal Revenue Code shall be equal to the rate of tax imposed under Section 23151 in lieu of the rate of tax specified in Section 11(b) of the Internal Revenue Code.

(2) In the case of an "S corporation" which is also a financial corporation, the rate of tax specified in paragraph (1) shall be increased by the excess of the rate imposed under Section 23183 over the rate imposed under Section 23151.

(b) The provisions of Section 1374(b)(3) of the Internal Revenue Code, relating to credits, shall be modified to provide that the tax imposed under subdivision (a) shall not be reduced by any credits allowed under this part.

(c) The provisions of Section 1374(b)(4) of the Internal Revenue Code, relating to coordination with Section 1201(a), shall not be applicable.

(d) In the case of a corporation which is subject to the provisions of former Section 1374 of the Internal Revenue Code (prior to amendment by Public Law 99-514), the provisions of that section shall be modified to provide that:

(1) The tax specified in Section 1374(b)(1) of the Internal Revenue Code shall be equal to the rate of tax imposed under Section 23151 in lieu of the rate of tax specified in Section 11(b) of the Internal Revenue Code.

(2) In the case of an "S corporation" which is also a financial corporation, the rate of tax specified in paragraph (1) shall be increased by the excess of the rate imposed under Section 23183 over the rate imposed under Section 23151.

SEC. 36. Section 23811 of the Revenue and Taxation Code is amended to read:

23811. Except as otherwise provided in this section, there is hereby imposed a tax on passive investment income attributable to California sources, determined in accordance with the provisions of Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income, as modified by this section.

(a) The tax imposed under this section shall not be imposed on an "S corporation" that has no excess net passive income for federal purposes determined in accordance with Section 1375 of the Internal Revenue Code.

(b) (1) The rate of tax shall be equal to the rate of tax imposed under Section 23151 in lieu of Section 11(b) of the Internal Revenue Code.

(2) In the case of an "S corporation" which is also a financial corporation, the rate of tax specified in paragraph (1) shall be increased by the excess of the rate imposed under Section 23183 over the rate imposed under Section 23151.

(c) The provisions of Section 1375(c)(1) of the Internal Revenue Code, relating to credits, shall be modified to provide that the tax imposed under subdivision (a) shall not be reduced by any credits allowed under this part.

(d) The term "subchapter C earnings and profits" as used in Sections 1362(d)(3) and 1375 of the Internal Revenue Code shall mean the subchapter C earnings and profits of the corporation attributable to California sources determined under this part, modified as provided in subdivision (e).

(e) (1) In the case of a corporation which elects to be treated as an "S corporation" for purposes of this part for its first income year beginning in 1987, or for its first income year for which it has in effect a valid federal S election, there shall be allowed as a deduction in determining that corporation's subchapter C earnings and profits at the close of any income year the amount of any consent dividend (as provided in paragraph (2)) paid after the close of that income year.

(2) In the event there is a determination that a corporation described in paragraph (1) has subchapter C earnings and profits at the close of any income year, that corporation shall be entitled to distribute a consent dividend to its shareholders. The amount of the consent dividend shall not exceed the difference between the corporation's subchapter C earnings and profits determined under subdivision (d) at the close of the income year with respect to which the determination is made and the corporation's subchapter C earnings and profits for federal income tax purposes at the same date. A consent dividend must be paid within 90 days of the date of the determination that the corporation has subchapter C earnings and profits. For this purpose, the date of a determination means the effective date of a closing agreement pursuant to Section 19441, the date an assessment of tax imposed by this section becomes final, or the date of execution by the corporation of an agreement with the Franchise Tax Board relating to liability for the tax imposed by this section. For purposes of Part 10 and this part, a corporation must make the election provided in Section 1368(e)(3) of the Internal Revenue Code for any consent dividend.

(3) If a corporation distributes a consent dividend, it shall claim the deduction provided in paragraph (1) by filing a claim therefor with the Franchise Tax Board within 120 days of the date of the determination specified in paragraph (2).

(4) The collection of the tax imposed by this section from a corporation described in paragraph (2) shall be stayed for 120 days

after the date of the determination specified in paragraph (2). If a claim is filed pursuant to paragraph (3), collection of the tax shall be further stayed until the date the claim is acted upon by the Franchise Tax Board.

(5) If a claim is filed pursuant to paragraph (3), the running of the statute of limitations on the making of assessments and actions for collection of the tax imposed by this section shall be suspended for a period of two years after the date of the determination specified in paragraph (2).

SEC. 37. Section 24416.2 of the Revenue and Taxation Code is amended to read:

24416.2. The term "qualified taxpayer" as used in Section 24416.1 means any of the following:

(a) A bank or corporation engaged in the conduct of a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(1) A net operating loss shall not be a net operating loss carryback for any income year and a net operating loss for any income year beginning on or after the date that the area in which the taxpayer conducts a trade or business is designated as an enterprise zone shall be a net operating loss carryover to each of the 15 income years following the income year of loss.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the taxpayer's business activities within the enterprise zone (as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code) prior to the enterprise zone expiration date. That attributable loss shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section by substituting "enterprise zone" for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to the enterprise zone (as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code) determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section by substituting "enterprise zone" for "this state."

(C) If a loss carryover is allowable pursuant to this section for any income year after the enterprise zone designation has expired, the enterprise zone shall be deemed to remain in existence for purposes of computing the limitation set forth in subparagraph (B) and allowing a net operating loss deduction.

(D) "Enterprise zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(b) A bank or corporation engaged in the conduct of a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(1) (A) A net operating loss shall not be a net operating loss carryback for any income year and, except as provided in subparagraph (B), a net operating loss for any income year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated the Los Angeles Revitalization Zone shall be a net operating loss carryover to each following income year that ends before the Los Angeles Revitalization Zone expiration date or to each of the 15 income years following the income year of loss, if longer.

(B) In the case of a financial institution to which Section 585, 586, or 593 of the Internal Revenue Code applies, a net operating loss for any income year beginning on or after January 1, 1984, shall be a net operating loss carryover to each of the five years following the income year of the loss. Subdivision (b) of Section 24416.1 shall not apply.

(2) For the purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the taxpayer's business activities within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) prior to the Los Angeles Revitalization Zone expiration date. The attributable loss shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified as follows:

(i) The loss shall be apportioned to the Los Angeles Revitalization Zone by multiplying the loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The Los Angeles Revitalization Zone" shall be substituted for this state.

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) determined in accordance with the provisions of paragraph (3).

(C) If a loss carryover is allowable pursuant to this section for any income year after the Los Angeles Revitalization Zone designation has expired, the Los Angeles Revitalization Zone shall be deemed to remain in existence for purposes of computing the limitation set forth in subparagraph (B) and allowing a net operating loss deduction.

(3) Attributable income shall be that portion of the taxpayer's California source business income which is apportioned to the Los Angeles Revitalization Zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with the provisions of Chapter 17

(commencing with Section 25101). That business income shall be further apportioned to the Los Angeles Revitalization Zone in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17, modified as follows:

(A) Business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the income year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(C) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the income year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the income year.

(4) "Los Angeles Revitalization Zone expiration date" means the date the Los Angeles Revitalization Zone designation expires, is repealed, or becomes inoperative pursuant to Section 7102, 7103, or 7104 of the Government Code.

(5) This subdivision shall be inoperative on the first day of the income year beginning on or after the determination date, and each income year thereafter, with respect to the taxpayer's business activities within a geographic area that is excluded from the map pursuant to Section 7102 of the Government Code, or an excluded area determined pursuant to Section 7104 of the Government Code. The determination date is the earlier of the first effective date of a determination under subdivision (c) of Section 7102 of the Government Code occurring after December 1, 1994, or the first effective date of an exclusion of an area from the amended Los Angeles Revitalization Zone under Section 7104 of the Government Code. However, if the taxpayer has any unused loss amount as of the date this section becomes inoperative, that unused loss amount may continue to be carried forward as provided in this subdivision.

(6) This subdivision shall cease to be operative on January 1, 1998. However, any unused net operating loss may continue to be carried over to following years as provided in this subdivision.

(c) For each income year beginning on or after January 1, 1995, and before January 1, 2003, a taxpayer engaged in the conduct of a trade or business within a LAMBRA.

(1) (A) A net operating loss shall not be a net operating loss carryback for any income year and, except as provided in subparagraph (B), a net operating loss for any income year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated a LAMBRA shall be a net

operating loss carryover to each following income year that ends before the LAMBRA expiration date or to each of the 15 income years following the income year of loss, if longer.

(B) In the case of a financial institution to which Section 585, 586, or 593 of the Internal Revenue Code applies, a net operating loss for any income year beginning on or after January 1, 1984, shall be a net operating loss carryover to each of the five years following the income year of the loss. Subdivision (b) of Section 24416.1 shall not apply.

(2) For the purposes of this subdivision:

(A) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(B) "Taxpayer" means a bank or corporation that conducts a trade or business within a LAMBRA and, for the first two income years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA and this state.

(i) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the income year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second income year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the income year prior to commencing business operations in the LAMBRA shall be zero. The deduction shall be allowed only if the taxpayer has a net increase in jobs in the state, and if one or more full-time employees is employed within the LAMBRA.

(ii) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(I) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(II) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(iii) In the case of a taxpayer that first commences doing business in the LAMBRA during the income year, for purposes of subclauses (I) and (II), respectively, of clause (ii) the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the income year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(C) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the taxpayer's business activities within a LAMBRA prior to the LAMBRA expiration date. The attributable loss shall be

determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified as follows:

(i) Loss shall be apportioned to a LAMBRA by multiplying the loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The LAMBRA" shall be substituted for "this state."

(D) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to a LAMBRA determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified as follows:

(i) Business income shall be apportioned to a LAMBRA by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The LAMBRA" shall be substituted for "this state."

(iii) If a loss carryover is allowable pursuant to this section for any income year after the LAMBRA designation has expired, the LAMBRA shall be deemed to remain in existence for purposes of computing this limitation.

(E) "LAMBRA expiration date" means the date the LAMBRA designation expires, is no longer binding, or becomes inoperative pursuant to Section 7110 of the Government Code.

(d) A taxpayer who qualifies as a "qualified taxpayer" shall, for the income year of the net operating loss and any income year to which that net operating loss may be carried, designate on the original return filed for each year the subdivision of this section which applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one subdivision of this section, the designation is to be made after taking into account subdivision (e).

(e) If a taxpayer is eligible to qualify under more than one subdivision of this section as a "qualified taxpayer," with respect to a net operating loss in an income year, the taxpayer shall designate which subdivision of this section is to apply to the taxpayer.

(f) Notwithstanding Section 24416, the amount of the loss determined under this section shall be the only net operating loss allowed to be carried over from that income year and the designation under subdivision (d) shall be included in the election under Section 24416.1.

SEC. 38. Section 24602 of the Revenue and Taxation Code is amended to read:

24602. (a) In addition to the application of Part II (commencing with Section 421) of Subchapter D of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to certain stock options, paragraphs (1), (2), and (3) of Section 421(a) of the Internal Revenue Code shall also apply to any California qualified stock option that is granted to an individual whose earned income from the corporation granting

the California qualified stock option for the income year in which that option is exercised does not exceed forty thousand dollars ($40,000). In the event that the option does not meet the necessary qualifications, the option shall be treated as a nonqualified stock option.

(b) For purposes of this section, "California qualified stock option" means a stock option that is issued and exercised pursuant to this section and that is designated by the corporation issuing the option as a California qualified stock option at the time the option is granted.

(c) (1) This section shall apply only to those stock options that are issued on or after January 1, 1997, and before January 1, 2002, by a corporation to its employee and are exercised by the employee, while employed by the corporation that issued those stock options (or within three months thereof, or within one year thereof if permanently and totally disabled as defined in Section 22(e)(3) of the Internal Revenue Code), during the income year with respect to any class of shares, or combination thereof, issued by the corporation, to the extent that the number of shares transferable by the exercise of the options does not exceed a total of 1,000 and have a combined fair market value of less than one hundred thousand dollars ($100,000). The combined fair market value of any stock shall be determined as of the time the option with respect to that stock is granted.

(2) Paragraph (1) shall be applied by taking options into account in the order in which they were granted.

(d) In the case of a California qualified stock option, no amount shall be included in the gross income of the employee until the time of the disposition of the option (or the stock acquired upon exercise of the option). No deduction shall be allowed under Section 162 of the Internal Revenue Code to the employer on the grant or exercise of a California qualified stock option.

(e) Subdivision (d) shall not apply to any stock option for which an election has been made under Section 83(b) of the Internal Revenue Code, relating to election to include in gross income in year of transfer.

SEC. 39. Section 24710 of the Revenue and Taxation Code is amended to read:

24710. (a) For each income year beginning on or after January 1, 1997, Section 475 of the Internal Revenue Code, relating to mark to market accounting method for securities dealers, as added by Section 13223 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), shall apply, except as otherwise provided.

(b) Section 13233(c)(2)(C) of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to the effective date for changes in the mark to market accounting method for securities dealers, is modified to provide that the amount taken into account under Section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably

over the five-income-year period beginning with the first income year beginning on or after January 1, 1997.

SEC. 40. Section 24903 of the Revenue and Taxation Code is repealed.

SEC. 41. Section 24918 of the Revenue and Taxation Code is amended to read:

24918. (a) Section 1017 of the Internal Revenue Code, relating to discharge of indebtedness, shall apply, except as otherwise provided. References to affiliated groups which file a consolidated return under Section 1501 of the Internal Revenue Code shall be treated as meaning members of the same unitary group which file a combined report under Article 1 (commencing with Section 25101) of Chapter 17.

(b) The amendments to Section 1017 of the Internal Revenue Code made by Section 13226 of the Revenue and Reconciliation Act of 1993 (P.L. 103-66), relating to modifications of discharge of indebtedness provisions, shall apply to discharges occurring on or after January 1, 1996, in income years beginning on or after January 1, 1996.

SEC. 42. Section 24954 is added to the Revenue and Taxation Code, to read:

24954. Section 1042 of the Internal Revenue Code, relating to sales of stock to employee stock ownership plans or certain cooperatives, shall apply to income years beginning on or after January 1, 1996.

SEC. 43. Section 1088.5 of the Unemployment Insurance Code is amended to read:

1088.5. (a) In addition to information reported in accordance with Section 1088, each employer shall file with the department the information provided in subdivision (b) on new employees.

(b) Each employer shall report all of the following information to the department:

(1) The hiring of any person who resides or works in this state to whom the employer anticipates paying earnings.

(2) The rehiring or return to work of any person who has been laid off, furloughed, separated, granted a leave without pay, or terminated from employment, and to whom the employer anticipates paying wages.

(c) Employers shall not be required to report on any of the following persons:

(1) Any person whom the employer pays wages of less than three hundred dollars ($300) each month.

(2) Any person who is under 18 years of age.

(d) (1) The department and the State Department of Social Services, jointly, shall adopt rules and regulations to establish exemptions in addition to those provided in subdivision (c), if the department and the State Department of Social Services determine the exemptions are needed to reduce unnecessary or burdensome

reporting or are needed to facilitate cost-effective operation of this section.

(2) The department and the State Department of Social Services shall adopt regulations required pursuant to paragraph (1) by April 1, 1993.

(e) (1) Employers shall submit a report within 30 days of the hiring, rehiring, or return to work of any person on whom the employer is required to report pursuant to this section.

(2) The report shall contain all of the following:

(A) The first initial and last name and social security number of the person.

(B) The employer's name, address, and state employer identification number.

(3) The report required by Section 1088 shall not be accepted in lieu of the report required by this section.

(f) Employers may report pursuant to this section, by submitting a copy of the employee's W-4 form, a form provided by the department, or any other hiring document, by mail or telefaxing or by any other means that is authorized by the department and that will result in timely reporting.

(g) The department shall retain information collected pursuant to this section for no more than 180 days after the end of the calendar quarter, except for purposes of enforcement of subdivision (i).

(h) The department may use the information collected pursuant to this section only for the following purposes:

(1) The administration and enforcement of this section.

(2) The identification, prevention, and collection of benefit overpayments pursuant to any of the following provisions:

(A) Article 4 (commencing with Section 1375) of Chapter 5.

(B) Article 5 (commencing with Section 2735) of Chapter 2 of Part 2.

(C) Section 3751.

(D) Section 4751.

(3) The location of noncustodial parents or the income of noncustodial parents.

(4) The identification of errors in employer reports of wages filed pursuant to Section 1088.

(5) The verification of employment of applicants for, and recipients of, services under the Aid to Families with Dependent Children program or the Food Stamp Program, provided for pursuant to Chapter 2 (commencing with Section 11200) of Part 3 and Chapter 10 (commencing with Section 18900) of Part 6, respectively, of Division 9 of the Welfare and Institutions Code.

(6) The identification and collection of delinquent liabilities under this code.

(7) To assist the department in determining the effectiveness of its job placement services.

(i) Information obtained by the department pursuant to this section may be released to the Franchise Tax Board for tax enforcement purposes.

(j) The department shall provide a written notice to any employer for the employer's first failure to report any new hire, rehire, or return to work of an employee. For each subsequent failure to report as required by this section that occurs after the date the employer receives notice from the department of his or her first failure to report, unless the failure is due to good cause, the employer shall be subject to a penalty of two hundred fifty dollars ($250).

(k) The department shall not enforce the employer reporting requirements of this section until April 1, 1993, or when regulations are adopted pursuant to subdivision (d), whichever is sooner.

(*l*) For purposes of this section, "wages" means the same as defined in Section 926.

SEC. 44. Section 56 of Chapter 952 of the Statutes of 1996 is amended to read:

Sec. 56. Except as otherwise provided, the provisions of this act shall be applied to taxable or income years beginning on or after January 1, 1997.

SEC. 45. For purposes of administering Article 6 (commencing with Section 19280) of Chapter 5 of Part 10.2 of Division 2 of the Revenue and Taxation Code, as added by Chapter 1242 of the Statutes of 1994, the sum of four hundred thousand dollars ($400,000) is hereby appropriated to the Franchise Tax Board, in augmentation of Item 1730-001-0242 of the Budget Act of 1997, that sum to be transferred to Item 1730-001-0001 of the Budget Act of 1997 for the purpose of funding Schedule (f) thereof, relating to court collections.

SEC. 46. The due date for the report to the Legislature required by Section 13 of Chapter 1242 of the Statutes of 1994 is hereby extended from April 1, 1998, to April 1, 2001.

SEC. 47. The Legislature finds and declares that this act repeals provisions that have been obsolete since January 1, 1981, when the provisions of Chapter 1150 of the Statutes of 1979 took effect, providing financial corporations with the same taxation treatment as banks, thereby prohibiting the imposition of personal property taxes or business license taxes on financial corporations by local jurisdictions. The repeal of Sections 23184, 23184.5, 23185, 23185a, and 23185b of the Revenue and Taxation Code made by this act shall not affect any act done or any right accruing or accrued, or any suit, appeal, or other proceeding that commenced under any of those sections before that repeal.

SEC. 48. The amendments to Sections 17053.49, 17062, 17570, 23221, 23649, 24710, and 24918 of, the addition of Section 24954 to, and the repeal of Section 24903 of, the Revenue and Taxation Code, and the amendments to Section 1088.5 of the Unemployment Insurance Code, made by this act are intended to clarify, and are consistent

with, the intent of Chapter 954 of the Statutes of 1996 and shall become operative as provided in Chapter 954 of the Statutes of 1996.

SEC. 49. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the individual sections of this act shall become operative as otherwise specifically provided in this act.

CHAPTER 605

An act to amend Section 30 of the Business and Professions Code, to amend Section 1666.5 of the Insurance Code, to amend Sections 17052.15, 17053.45, 17053.46, 17220, 18402, 18604, 18606, 18621.5, 18637, 18638, 18639, 18645, 18662, 18670, 19009, 19011, 19021, 19023, 19024, 19058, 19132.5, 19141.5, 19141.6, 19147, 19164, 19192, 19254, 19263, 19301, 19340, 19392, 19411, 19542, 19563, 19701, 19705, 19706, 19719, 23037, 23038, 23040.1, 23095, 23098, 23151, 23151.1, 23151.2, 23153, 23183.1, 23183.2, 23186, 23303, 23305.2, 23332, 23332.5, 23334, 23455, 23501, 23610.5, 23612.6, 23623.5, 23625, 23645, 23646, 23731, 23802, 23809, 23811, 24346, 24356.4, 24356.8, 24357, 24358, 24359, 24402, 24407, 24408, 24409, 24411, 24416, 24416.2, 24677, 24678, 24901, 24912, 24916, 24917, 24942, 25105, 25110, 25111, 25112, and 25128 of, and to repeal Sections 23184, 23184.5, 23185, 23185a, 23185b, 23186.1, 23186.2, and 23186.5 of, the Revenue and Taxation Code, and to amend Section 56 of Chapter 952 of the Statutes of 1996, relating to taxation.

[Approved by Governor October 1, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Section 30 of the Business and Professions Code is amended to read:

30. (a) Notwithstanding any other provision of law, any board, as defined in Section 22, and the State Bar and the Department of Real Estate shall at the time of issuance or renewal of the license require that any licensee provide its federal employer identification number if the licensee is a partnership or his or her social security number for all others.

(b) Any licensee failing to provide the federal identification number or social security number shall be reported by the licensing board to the Franchise Tax Board and, if failing to provide after notification pursuant to paragraph (1) of subdivision (b) of Section 19528 of the Revenue and Taxation Code, shall be subject to the penalty provided in paragraph (2) of subdivision (b) of Section 19528 of the Revenue and Taxation Code.

(c) In addition to the penalty specified in subdivision (b), a licensing board may not process any application for an original license or for renewal of a license unless the applicant or licensee provides its federal employer identification number or social security number where requested on the application.

(d) A licensing board shall, upon request of the Franchise Tax Board, furnish to the Franchise Tax Board the following information with respect to every licensee:

(1) Name.

(2) Address or addresses of record.

(3) Federal employer identification number if the entity is a partnership or social security number for all others.

(4) Type of license.

(5) Effective date of license or a renewal.

(6) Expiration date of license.

(7) Whether license is active or inactive, if known.

(8) Whether license is new or a renewal.

(e) For the purposes of this section:

(1) "Licensee" means any entity, other than a corporation, authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(2) "License" includes a certificate, registration, or any other authorization needed to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(3) "Licensing board" means any board, as defined in Section 22, the State Bar, and the Department of Real Estate.

(f) The reports required under this section shall be filed on magnetic media or in other machine-readable form, according to standards furnished by the Franchise Tax Board.

(g) Licensing boards shall provide to the Franchise Tax Board the information required by this section at a time that the Franchise Tax Board may require.

(h) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the social security number and federal employer identification number furnished pursuant to this section shall not be deemed to be a public record and shall not be open to the public for inspection.

(i) Any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a), or any former officer or employee or other individual who in the course of his or her employment or duty has or has had access to the information required to be furnished under this section, may not disclose or make known in any manner that information, except as provided in this section to the Franchise Tax Board or as provided in subdivision (k).

(j) It is the intent of the Legislature in enacting this section to utilize the social security account number or federal employer identification number for the purpose of establishing the identification of persons affected by state tax laws and for purposes of compliance with Section 11350.6 of the Welfare and Institutions Code and, to that end, the information furnished pursuant to this section shall be used exclusively for those purposes.

(k) If the board utilizes a national examination to issue a license, and if a reciprocity agreement or comity exists between the State of California and the state requesting release of the social security number, any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a) may release a social

security number to an examination or licensing entity, only for the purpose of verification of licensure or examination status.

SEC. 2. Section 1666.5 of the Insurance Code is amended to read:

1666.5. (a) Notwithstanding any other provision of law, the commissioner shall at the time of issuance or renewal of any license under this chapter or Chapter 6 (commencing with Section 1760), Chapter 7 (commencing with Section 1800), or Chapter 8 (commencing with Section 1831) require that any licensee provide its federal employer identification number if the licensee is a partnership or his or her social security number for all others.

(b) Any licensee failing to provide the federal identification number or social security number shall be reported by the commissioner to the Franchise Tax Board and, if failing to provide after notification pursuant to paragraph (1) of subdivision (b) of Section 19528 of the Revenue and Taxation Code, shall be subject to the penalty provided in paragraph (2) of subdivision (b) of Section 19528 of the Revenue and Taxation Code.

(c) The commissioner shall, upon request of the Franchise Tax Board, furnish to the board all of the following information with respect to every licensee:

(1) Licensee's name.

(2) Address or addresses of record.

(3) Federal employer identification number if the entity is a partnership or owner's name and social security number for all others.

(4) Type of license.

(5) Effective date of license or a renewal.

(6) Expiration date of license.

(7) Whether license is active or inactive, if known.

(8) Whether license is new or a renewal.

(d) For the purposes of this section:

(1) "Licensee" means any entity, other than a corporation, authorized by a license, certificate, registration, or other means to engage in the insurance business regulated by this code.

(2) "License" includes a certificate, registration, or any other authorization needed to engage in the insurance business regulated by this code.

(e) The reports required under this section shall be filed on magnetic media or in other machine-readable form, according to standards furnished by the Franchise Tax Board.

(f) The commissioner shall begin providing to the Franchise Tax Board the information required by this section as soon as economically feasible, but no later than July 1, 1987. The information shall be furnished at a time that the Franchise Tax Board may require.

(g) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the information furnished pursuant to this section shall not be deemed

to be a public record and shall not be open to the public for inspection.

(h) Any deputy, agent, clerk, officer, or employee of the commissioner, or any former officer or employee or other individual who in the course of his or her employment or duty has or has had access to the information required to be furnished under this section, shall not disclose or make known in any manner that information, except as provided in this section to the Franchise Tax Board.

(i) It is the intent of the Legislature in enacting this section to utilize the social security account number or federal employer identification number for the purpose of establishing the identification of persons affected by state tax laws and, to that end, the information furnished pursuant to this section shall be used exclusively for tax enforcement purposes.

SEC. 3. Section 17052.15 of the Revenue and Taxation Code is amended to read:

17052.15. (a) For each taxable year beginning on or after January 1, 1992, and before January 1, 1998, there shall be allowed a credit against the "net tax," as defined in Section 17039, an amount equal to the sales or use tax paid or incurred during the taxable year by the taxpayer in connection with the taxpayer's purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means a person or entity engaged in a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(2) "Qualified property" means the purchase on or after May 1, 1992, and before the zone expiration date, of either or both of the following:

(A) Building materials to replace or repair the taxpayer's building and fixtures.

(B) Machinery or equipment, excluding inventory, to be used by the taxpayer exclusively in the Los Angeles Revitalization Zone.

(3) "Zone expiration date" means the date the Los Angeles Revitalization Zone designation expires, is repealed, or becomes inoperative pursuant to Section 7102, 7103, or 7104 of the Government Code.

(c) If the taxpayer is allowed a credit for qualified property pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to that qualified property.

(d) In the case where the credit otherwise allowed under this section exceeds the net tax for the taxable year, that portion of the credit that exceeds the net tax may be carried over and added to the credit, if any, in succeeding taxable years for the number of taxable years in which the designation of the Los Angeles Revitalization Zone under Section 7102 of the Government Code is operative, or 15 taxable years, if longer, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to the sales and use tax paid or incurred in connection with the taxpayer's purchase of qualified property.

(f) (1) The amount of credit otherwise allowed under this section and Sections 17053.10 and 17053.17, including any credit carryover from prior years, that may reduce the net tax for the taxable year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributable to the Los Angeles Revitalization Zone (designated pursuant to Section 7102 of the Government Code) determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be that portion of the taxpayer's California source business income which is apportioned to the Los Angeles Revitalization Zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11. That business income shall be further apportioned to the Los Angeles Revitalization Zone in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(A) Business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year.

(C) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the taxable year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the taxable year.

(3) The portion of the credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the net tax for the taxable year, as provided in subdivision (d).

(g) If the qualified property is disposed of or no longer used by the taxpayer in the Los Angeles Revitalization Zone, at any time before the close of the second taxable year after the property is placed in service, the amount of the credit previously claimed shall be added to the taxpayer's tax liability in the taxable year of that disposition or nonuse.

(h) This section shall be inoperative on the first day of the taxable year beginning on or after the determination date, and each taxable year thereafter, with respect to the taxpayer's business activities within a geographic area that is excluded from the map pursuant to Section 7102 of the Government Code, or an excluded area determined pursuant to Section 7104 of the Government Code. The determination date is the earlier of the first effective date of a determination under subdivision (c) of Section 7102 of the Government Code occurring after December 1, 1994, or the first effective date of an exclusion of an area from the amended Los Angeles Revitalization Zone under Section 7104 of the Government Code. However, if the taxpayer has any unused credit amount as of the date this section becomes inoperative, that unused credit amount may continue to be carried forward as provided in subdivision (d).

(i) This section shall remain in effect only until December 1, 1998, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (d).

SEC. 4. Section 17053.45 of the Revenue and Taxation Code is amended to read:

17053.45. (a) For each taxable year beginning on or after January 1, 1995, and before January 1, 2003, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) an amount equal to the sales or use tax paid or incurred by the taxpayer in connection with the purchase of qualified property to the extent that the qualified property does not exceed a value of one million dollars ($1,000,000).

(b) For purposes of this section:

(1) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(2) "Taxpayer" means a taxpayer or partnership that conducts a trade or business within a LAMBRA and, for the first two taxable years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA.

(A) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the taxable year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second taxable year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the taxable year prior to commencing business operations in the LAMBRA shall be zero. If the taxpayer has a net increase in jobs in the state, the credit shall be allowed only if one or more full-time employees is employed within the LAMBRA.

(B) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(i) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(ii) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(C) In the case of a taxpayer who first commences doing business in the LAMBRA during the taxable year, for purposes of clauses (i) and (ii), respectively, of subparagraph (B), the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the taxable year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(3) "Qualified property" means the purchase of any of the following for exclusive use in a LAMBRA:

(A) High technology equipment, including, but not limited to, computers and electronic processing equipment.

(B) Aircraft maintenance equipment, including, but not limited to, engine stands, hydraulic mules, power carts, test equipment, handtools, aircraft start carts, and tugs.

(C) Aircraft components, including, but not limited to, engines, fuel control units, hydraulic pumps, avionics, starts, wheels, and tires.

(D) Any property that is Section 1245 property, as defined in Section 1245(a)(3) of the Internal Revenue Code.

(c) The credit provided under subdivision (a) shall be allowed only for qualified property manufactured in California unless qualified property of a comparable quality and price is not available for timely purchase and delivery from a California manufacturer.

(d) In the case where the credit otherwise allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit which exceeds the "net tax" may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the purchase of qualified property.

(f) (1) The amount of credit otherwise allowed under this section and Section 17053.46, including any credit carryover from prior years, that may reduce the "net tax" for the taxable year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributed to a LAMBRA determined as if that attributable income represented all the income of the taxpayer subject to tax under this part.

(2) The amount of attributed income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17

(commencing with Section 25101) of Part 11, modified for purposes of this section as follows:

(A) Income shall be apportioned to a LAMBRA by multiplying total business income by a fraction, the numerator of which is the property factor, plus the payroll factor, and the denominator of which is two.

(B) "The LAMBRA" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (d).

(g) (1) If the qualified property is disposed of or no longer used by the taxpayer in the LAMBRA, at any time before the close of the second taxable year after the property is placed in service, the amount of the credit previously claimed, with respect to that property, shall be added to the taxpayer's tax liability in the taxable year of that disposition or nonuse.

(2) At the close of the second taxable year, if the taxpayer has not increased the number of its employees as determined by paragraph (2) of subdivision (b), then the amount of the credit previously claimed shall be added to the taxpayer's net tax for the taxpayer's second taxable year.

(h) If the taxpayer is allowed a credit for qualified property pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to that qualified property.

(i) This section shall remain in effect only until December 1, 2003, and as of that date is repealed. However, any unused credit may continue to be carried forward as provided in subdivision (d), until the credit is exhausted.

SEC. 5. Section 17053.46 of the Revenue and Taxation Code is amended to read:

17053.46. (a) For each taxable year beginning on or after January 1, 1995, and before January 1, 2003, there shall be allowed as a credit against the "net tax" (as defined in Section 17039) to a qualified taxpayer for hiring a qualified disadvantaged individual or a qualified displaced employee during the taxable year for employment in the LAMBRA. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of the qualified wages in the first year of employment.

(2) Forty percent of the qualified wages in the second year of employment.

(3) Thirty percent of the qualified wages in the third year of employment.

(4) Twenty percent of the qualified wages in the fourth year of employment.

(5) Ten percent of the qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) That portion of wages paid or incurred by the employer during the taxable year to qualified disadvantaged individuals or qualified displaced employees that does not exceed 150 percent of the minimum wage.

(B) The total amount of qualified wages which may be taken into account for purposes of claiming the credit allowed under this section shall not exceed two million dollars ($2,000,000) per taxable year.

(C) Wages received during the 60-month period beginning with the day the individual commences employment with the taxpayer.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(4) "Qualified disadvantaged individual" means an individual who satisfies all of the following requirements:

(A) (i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in a LAMBRA.

(ii) Who performs at least 50 percent of his or her services for the taxpayer during the taxable year in the LAMBRA.

(B) Who is hired by the employer after the designation of the area as a LAMBRA in which the individual's services were primarily performed.

(C) Who is any of the following immediately preceding the individual's commencement of employment with the taxpayer:

(i) An individual who has been determined eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.).

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 as provided pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any individual who has been certified eligible by the Employment Development Department under the federal Targeted Jobs Tax Credit Program whether or not this program is in effect.

(5) "Qualified taxpayer" means a taxpayer or partnership that conducts a trade or business within a LAMBRA and, for the first two taxable years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA.

(A) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the taxable year prior to commencing business operations

in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second taxable year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the taxable year prior to commencing business operations in the LAMBRA shall be zero. If the taxpayer has a net increase in jobs in the state, the credit shall be allowed only if one or more full-time employees is employed within the LAMBRA.

(B) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(i) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(ii) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(C) In the case of a taxpayer who first commences doing business in the LAMBRA during the taxable year, for purposes of clauses (i) and (ii), respectively, of subparagraph (B), the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the taxable year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(6) "Qualified displaced employee" means an individual who satisfies all of the following requirements:

(A) Any civilian or military employee of a base or former base who has been displaced as a result of a federal base closure act.

(B) (i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in a LAMBRA.

(ii) Who performs at least 50 percent of his or her services for the taxpayer during the taxable year in a LAMBRA.

(C) Who is hired by the employer after the designation of the area in which services were performed as a LAMBRA.

(c) (1) For purposes of this section, both of the following apply:

(A) All employees of trades or businesses that are under common control shall be treated as employed by a single employer.

(B) The credit (if any) allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit.

The regulations prescribed under this paragraph shall be based on principles similar to the principles that apply in the case of controlled groups of corporations as specified in subdivision (e) of Section 23622.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (d)) for any calendar year ending after that acquisition, the employment relationship between an

employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(d) (1) If the employment of any employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount (determined under those regulations) equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable employment compensation laws that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(4) At the close of the second taxable year, if the taxpayer has not increased the number of its employees as determined by paragraph (5) of subdivision (b), then the amount of the credit previously claimed shall be added to the taxpayer's net tax for the taxpayer's second taxable year.

(e) In the case of an estate or trust, both of the following apply:

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated (for purposes of this part) as the employer with respect to those wages.

(f) The credit shall be reduced by the credit allowed under Section 17053.7. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (g) or (h).

(g) In the case where the credit otherwise allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit that exceeds the "net tax" may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(h) (1) The amount of credit otherwise allowed under this section and Section 17053.45, including prior year credit carryovers, that may reduce the "net tax" for the taxable year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributed to a LAMBRA determined as if that attributed income represented all of the net income of the taxpayer subject to tax under this part.

(2) The amount of attributed income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section as follows:

(A) Income shall be apportioned to a LAMBRA by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) "The LAMBRA" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (g).

(i) If the taxpayer is allowed a credit pursuant to this section for qualified wages paid or incurred, only one credit shall be allowed to the taxpayer under this part with respect to any wage consisting in whole or in part of those qualified wages.

(j) This section shall remain in effect only until December 1, 2003, and as of that date is repealed. However, any unused credit may continue to be carried forward as provided in subdivision (g), until the credit is exhausted.

SEC. 6. Section 17220 of the Revenue and Taxation Code is amended to read:

17220. (a) Section 164(a)(3) of the Internal Revenue Code, relating to the deductibility of state, local, and foreign income, war profits, and excess profits taxes, shall not apply.

(b) In addition to the provisions of Section 164(c) of the Internal Revenue Code, relating to deduction denied in case of certain taxes, no deduction shall be allowed for any tax imposed under Chapter 10.5 (commencing with Section 17935), Chapter 10.6 (commencing with Section 17941), or Chapter 10.7 (commencing with Section 17951) of this part or under Part 11 (commencing with Section 23001).

SEC. 7. Section 18402 of the Revenue and Taxation Code is amended to read:

18402. (a) Except where the context otherwise requires, the general provisions and definitions provided in Chapter 1 (commencing with Section 17001) of Part 10 and in Chapter 1 (commencing with Section 23001) of Part 11 shall apply to this part.

(b) For purposes of this part, "person" includes an individual, fiduciary, partnership, limited liability company, corporation, or organization exempt from taxation under Section 23701.

(c) (1) Whenever provisions of this part are applied in connection with Part 10 (commencing with Section 17001), the terms "taxpayer," "corporation" and "taxable year" have the same meaning as defined in Chapter 1 (commencing with Section 17001) of Part 10.

(2) Whenever provisions of this part are applied in connection with Part 11 (commencing with Section 23001), the terms "taxpayer," "corporation," "income year," and "taxable year" have the same meaning as defined in Article 2 (commencing with Section 23030) of Chapter 1 of Part 11.

SEC. 8. Section 18604 of the Revenue and Taxation Code is amended to read:

18604. (a) The Franchise Tax Board may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by Part 11 (commencing with Section 23001), in the manner and form as the Franchise Tax Board may determine. No extension or extensions shall aggregate more than seven months from the due date for filing the return.

(b) An extension for the filing of the return of taxes imposed by Part 11 (commencing with Section 23001) shall be allowed any corporation if, in the manner and at the time as the Franchise Tax Board may prescribe, that corporation pays, on or before the date prescribed for payment of the tax, the amount properly estimated as provided in Section 19023 or 19024.

(c) An extension of time granted pursuant to this section is not an extension of time for payment of tax required to be paid on or before the due date of the return without regard to extension. Underpayment of tax penalties shall be imposed as provided by law without regard to any extension granted under this section.

SEC. 9. Section 18606 of the Revenue and Taxation Code is amended to read:

18606. (a) In cases where receivers, trustees in a case under Title 11 of the United States Code, or assignees are operating the property or business of a corporation those receivers, trustees, or assignees shall make returns for that corporation in the same manner and form as that corporation is required to make a return.

(b) Any tax due on the basis of returns made by receivers, trustees, or assignees shall be collected in the same manner as if collected from the corporation of whose business or property they have custody and control.

SEC. 10. Section 18621.5 of the Revenue and Taxation Code is amended to read:

18621.5. (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic technology shall be in a form as the Franchise Tax Board may prescribe and is not complete, and therefore not filed, unless an electronic filing declaration is signed by the taxpayer, in accordance with Section 18621 in the case of individuals, subdivision (a) of Section 18505 in the case of estates or trusts, corporations, or limited liability companies classified as corporations for California income tax purposes, subdivision (a) of Section 18633 in the case of a partnership, or Section 18633.5 in the case of limited liability companies classified as partnerships for California income tax purposes. The Franchise Tax Board may prescribe forms and instructions for requiring the electronic filing declaration to be retained by the preparer or taxpayer and may require the declaration to be furnished to the Franchise Tax Board upon request.

(b) Notwithstanding any other provision of law, any return, declaration, statement, or other document otherwise required to be signed that is filed in a traditional medium and captured using electronic imaging technology shall be deemed to be a valid original document upon reproduction to paper form by the Franchise Tax Board.

(c) Notwithstanding any other law, any return, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic technology in a form as required by the Franchise Tax Board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the Franchise Tax Board.

(d) "Electronic imaging technology" means a system of microphotography, optical disk, or reproduction by other technique that does not permit additions, deletions, or changes to the original document. The system may include, but is not limited to, any magnetic media or other machine readable form.

(e) "Traditional medium" means any return, declaration, statement, or other document required to be made pursuant to this article other than those made using electronic imaging technology.

(f) "Electronic technology" includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

SEC. 11. Section 18637 of the Revenue and Taxation Code is amended to read:

18637. (a) Every individual, partnership, limited liability company, corporation, joint stock company or association, insurance company, business trust, or so-called Massachusetts trust, engaged in a trade or business in this state and making payment in the course of the trade or business to another person, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this state or any political subdivision of this state, or any city organized under a freeholder's charter, or any political body not a subdivision or agency of the state, having the control, receipt, custody, disposal, or payment of interest (other than interest coupons payable to bearer), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income amounting to six hundred dollars ($600) or over, paid or payable during any year to any taxpayer, shall make a complete return to the Franchise Tax Board, which shall contain or be verified by a written declaration that it is made under the penalties of perjury, under the regulations and in the form and manner and to the extent as may be prescribed by it.

(b) For purposes of subdivision (a), "trade or business" includes the activities of nonprofit organizations.

(c) In lieu of an information return required by subdivision (a), the Franchise Tax Board may require that a copy of the federal information return be filed with the Franchise Tax Board.

(d) Every entity required to make a return under subdivision (a) shall furnish to each person whose name is required to be set forth in the return a written statement showing both of the following:

(1) The name, address, and identification number of the entity required to make the return.

(2) The aggregate amount of payments to the person required to be shown on the return.

The written statement required under this subdivision shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subdivision (a) was required to be made.

(e) This section shall not apply to tips with respect to which Section 13055 of the Unemployment Insurance Code applies. The only records which an employer shall be required to keep under this section in connection with charged tips shall be charge receipts and copies of statements furnished by employees under Section 13055 of the Unemployment Insurance Code.

SEC. 12. Section 18638 of the Revenue and Taxation Code is amended to read:

18638. Every individual, partnership, limited liability company, corporation, joint stock company or association, insurance company, business trust, or so-called Massachusetts trust, shall be required to file a return for certain payments of remuneration for services and furnish a written statement to the person whose name is required to be set forth on the return in accordance with the provisions of Section 6041A of the Internal Revenue Code, except that no return or statement shall be required if a statement with respect to the services is required to be furnished under Division 6 (commencing with Section 13000) of the Unemployment Insurance Code (relating to withholding tax on wages) or Section 18647, and no return or statement shall be required with respect to direct sales pursuant to Section 6041A(b) of the Internal Revenue Code.

SEC. 13. Section 18639 of the Revenue and Taxation Code is amended to read:

18639. (a) Any person required to file an information return with the Internal Revenue Service under Section 6049 of the Internal Revenue Code (relating to payment of interest) or Section 6042 of the Internal Revenue Code (relating to payment of dividends) shall be required to report that information to the Franchise Tax Board.

(b) (1) In addition to those reports required under subdivision (a), information returns shall be required, at the time and in the form and manner and to the extent that the Franchise Tax Board may prescribe, from both of the following:

(A) Every person who makes payments of exempt-interest dividends, as described in Section 852(b)(5) of the Internal Revenue Code, that are not exempt-interest dividends, as described in Section 17145 of the Revenue and Taxation Code, aggregating ten dollars ($10) or more to any person, other than to any person described in paragraph (2), during any calendar year.

(B) Every person who receives payments of interest as a nominee and who makes payments aggregating ten dollars ($10) or more during any calendar year to any other person, other than to any person described in paragraph (2), with respect to the interest so received. For purposes of this paragraph, "interest" is limited to interest on any obligation if the interest is exempt from tax under Section 103(a) of the Internal Revenue Code or if the interest is exempt from tax, without regard to the identity of the holder, under any other provision of Title 26 of the United States Code, but which is not exempt from income tax under Part 10 (commencing with Section 17001).

(2) For purposes of this subdivision, a person shall not be required to make a report pursuant to paragraph (1) if the person receiving the payment is any of the following:

(A) A corporation.

(B) An organization exempt from taxation under Section 23701 or an individual retirement plan.

(C) The United States or any wholly owned agency or instrumentality thereof.

(D) A state, the District of Columbia, a possession of the United States, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing.

(E) A foreign government, a political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing.

(F) An international organization or any wholly owned agency or instrumentality thereof.

(G) A foreign central bank of issue.

(H) A dealer in securities or commodities required to register under the laws of the United States or a state, the District of Columbia, or possession of the United States.

(I) A real estate investment trust, as defined in Section 856 of the Internal Revenue Code.

(J) An investment company, as defined in Section 80a-3 of the United States Code, registered at all times during the taxable year under the Investment Company Act of 1940.

(K) A common trust fund, as defined in Section 17671.

(L) Any trust that is exempt from tax under Section 664(c) of Title 15 of the Internal Revenue Code.

(c) Every person required to make a return under this section shall also furnish a statement to each person whose name is set forth in the return, as required to do so by the Internal Revenue Code.

SEC. 14. Section 18645 of the Revenue and Taxation Code is amended to read:

18645. (a) The Franchise Tax Board may require a copy of the federal information return to be filed with the Franchise Tax Board if a federal information return was required under any of the following:

(1) Section 6039C of the Internal Revenue Code, relating to returns with respect to foreign persons holding direct investments in United States real property interests, if that person holds a direct investment in a California real property interest as defined in Section 18662.

(2) Section 6050H of the Internal Revenue Code, relating to mortgage interest received in trade or business from individuals.

(3) Section 6050J of the Internal Revenue Code, relating to foreclosures and abandonments of security.

(4) Section 6050K of the Internal Revenue Code, relating to exchanges of certain partnership interests.

(5) Section 6050L of the Internal Revenue Code, relating to certain dispositions of donated property.

(6) Section 6050N of the Internal Revenue Code, relating to returns regarding payments of royalties.

(7) Section 6050P of the Internal Revenue Code, relating to returns regarding the cancellation of indebtedness by certain financial entities.

(b) Every person required to make a return under subdivision (a) shall also furnish a statement to each person whose name is required to be set forth in the return, as required to do so by the Internal Revenue Code.

(c) A transferor of a partnership interest shall be required to notify the partnership of that exchange in accordance with Section 6050K(c) of the Internal Revenue Code.

(d) The Franchise Tax Board shall require a copy of the federal information return to be filed with the Franchise Tax Board if a federal information return was required under Section 6050I of the Internal Revenue Code, relating to cash received in trade or business.

(e) (1) The Attorney General shall, upon court order following a showing ex parte to a magistrate of an articulable suspicion that an individual or entity has committed a felony offense to which a federal information return is related, be provided a copy of a federal information return filed with the Franchise Tax Board under subdivision (d). The Attorney General may make a return or information therefrom available to a district attorney subject to regulations promulgated by the Attorney General. The regulations shall require the district attorney seeking the return or information to specify in writing the specific reasons for believing that a felony offense has been committed to which the return or information is related.

(2) Any information or return obtained by the Attorney General or a district attorney pursuant to this section shall be confidential and used only for investigative or prosecutorial purposes.

SEC. 15. Section 18662 of the Revenue and Taxation Code is amended to read:

18662. (a) The Franchise Tax Board may, by regulation, require any person, in whatever capacity acting (including lessees or mortgagors of real or personal property, fiduciaries, employers, and any officer or department of the state or any political subdivision or agency of the state, or any city organized under a freeholder's charter, or any political body not a subdivision or agency of the state), having the control, receipt, custody, disposal, or payment of items of income specified in subdivision (b), to withhold an amount, determined by the Franchise Tax Board to reasonably represent the amount of tax due when the items of income are included with other income of the taxpayer, and to transmit the amount withheld to the Franchise Tax Board at the time as it may designate.

(b) The items of income referred to in subdivision (a) are interest, dividends, rents, prizes and winnings, premiums, annuities, emoluments, compensation for services, including bonuses, partnership income or gains, and other fixed or determinable annual or periodical gains, profits, and income.

(c) The Franchise Tax Board may authorize the tax under subdivision (a) to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent.

(d) Any person failing to withhold from any payments any amounts required by subdivision (a) to be withheld is liable for the amount withheld or the amount of taxes due from the person to whom the payments are made to an extent not in excess of the amounts required to be withheld, whichever is greater, unless it is shown that the failure to withhold is due to reasonable cause.

(e) (1) In the case of any disposition of a California real property interest by a person (but not a partnership as determined in accordance with Subchapter K of Chapter 1 of Subtitle A of the Internal Revenue Code, or a corporation), when the return required to be filed with the Secretary of the Treasury under Section 6045(e) of the Internal Revenue Code indicates, or the authorization for the disbursement of the transaction's funds instructs, that the funds be disbursed either to a transferor with a last known street address outside the boundaries of this state at the time of the transfer of the title to the California real property or to the financial intermediary of the transferor, the transferee shall be required to withhold an amount equal to $3^1/_3$ percent of the sales price of the California real property conveyed.

(2) In the case of any disposition of a California real property interest by a corporation, the transferee shall be required to withhold an amount equal to $3^1/_3$ percent of the sales price of the California real property conveyed, if the corporation immediately after the transfer of the title to the California real property has no permanent place of business in California. For purposes of this subdivision, a corporation has no permanent place of business in California if all of the following apply:

(A) It is not organized and existing under the laws of California.

(B) It does not qualify with the office of the Secretary of State to transact business in California.

(C) It does not maintain and staff a permanent office in California.

(3) Notwithstanding any other provision of this subdivision, all of the following shall apply:

(A) No transferee shall be required to withhold any amount under this subdivision if the sales price of the California real property conveyed does not exceed one hundred thousand dollars ($100,000).

(B) No transferee shall be required to withhold any amount under this subdivision unless written notification of the withholding requirements of this subdivision has been provided by the real estate escrow person.

(C) No transferee shall be required to withhold under this subdivision when the transferor is a bank acting as trustee other than a trustee of a deed of trust.

(D) No transferee shall be required to withhold under this subdivision when the transferee is a corporate beneficiary under a mortgage or beneficiary under a deed of trust and the California real property is acquired in judicial or nonjudicial foreclosure or by a deed in lieu of foreclosure.

(E) No transferee shall be required to withhold any amount under this subdivision if the transferee, in good faith and based on all the information of which he or she has knowledge, relies on a written certificate executed by the transferor, certifying under penalty of perjury, any of the following:

(i) That the transferor is a resident of California.

(ii) That the California real property being conveyed is the principal residence of the transferor, within the meaning of Section 1034 of the Internal Revenue Code.

(iii) The transferor, if a corporation, has a permanent place of business in California.

(4) (A) At the request of the transferor, the Franchise Tax Board may authorize that a reduced amount or no amount be withheld under this subdivision if the Franchise Tax Board determines that to substitute a reduced amount or no amount shall not jeopardize the collection of tax imposed by Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001). If the transferor provides documentation sufficient for the Franchise Tax Board to determine the actual gain required to be recognized on the transaction, the Franchise Tax Board may authorize a reduced amount based on the amount of the gain, as determined, which will result in a sum which is substantially equivalent to the amount of tax reasonably estimated to be due under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) from the inclusion of the gain in the gross amount of the transferor.

(B) Within 45 days after receiving a request that a reduced amount or no amount be withheld, the Franchise Tax Board shall either authorize a reduced amount or no amount, or deny the request.

(C) In the case where the parties to the transaction are requesting that a reduced amount or no amount be withheld and the response by the Franchise Tax Board to the request has not been received at the time title to the California real property is transferred, the parties may direct the real estate escrow person to hold in trust for 45 days the amount required to be withheld under this subdivision. The parties shall instruct the real estate escrow person that at the end of 45 days the real estate escrow person shall remit the amount withheld to the Franchise Tax Board in accordance with this section, unless the Franchise Tax Board has authorized that a reduced amount or no amount be withheld.

(5) Amounts withheld and payments made in accordance with this subdivision shall be reported and remitted to the Franchise Tax

Board in the form and at the time as the Franchise Tax Board shall determine.

(6) "California real property interest" means an interest in real property located in California and defined in Section 897(c)(1)(A)(i) of the Internal Revenue Code.

(7) For purposes of this subdivision, "financial intermediary" means an agent for the purpose of receiving and transferring funds to a principal.

(8) For purposes of this subdivision, "real estate escrow person" means any of the following persons involved in the real estate transaction:

(A) The person (including any attorney, escrow company, or title company) responsible for closing the transaction.

(B) If no other person described in subparagraph (A) is responsible for closing the transaction, then any other person who receives and disburses the consideration or value for the interest or property conveyed.

(9) (A) Unless the real estate escrow person provides "assistance," it shall be unlawful for any real estate escrow person to charge any customer for complying with the requirements of this subdivision.

(B) For purposes of this paragraph, "assistance" includes, but is not limited to, helping the parties clarify with the Franchise Tax Board the issue of whether withholding is required under this subdivision, helping the parties request that the Franchise Tax Board authorize a reduced amount or no amount be withheld under this subdivision, or, upon request of the parties, withholding an amount under this subdivision and remitting the amount to the Franchise Tax Board.

(C) For purposes of this paragraph, "assistance" does not include providing the written notification of the withholding requirements of this subdivision, or providing the certification that either:

(i) The transferor is a resident of California or that the California real property being conveyed is the transferor's principal residence.

(ii) The transferor, if a corporation, has a permanent place of business in California.

(D) In a case where the real estate escrow person provides "assistance" in complying with the withholding requirements of this subdivision, it shall be unlawful for the real estate escrow person to charge any customer a fee that exceeds forty-five dollars ($45).

(10) For purposes of this subdivision, "sales price" means the sum of all of the following:

(A) The cash paid, or to be paid. The term "cash paid, or to be paid" does not include stated or unstated interest or original issue discount (as determined by Sections 1271 to 1275, inclusive, of the Internal Revenue Code).

(B) The fair market value of other property transferred, or to be transferred.

(C) The outstanding amount of any liability assumed by the transferee or to which the California real property interest is subject immediately before and after the transfer.

(f) Whenever any person has withheld any amount pursuant to this section, the amount so withheld shall be held in trust for the State of California. The amount of the fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(g) Withholding shall not be required under this section with respect to wages, salaries, fees, or other compensation paid by a corporation for services performed in California for that corporation to a nonresident corporate director for director services, including attendance at a board of directors' meeting.

(h) In the case of any payment described in subdivision (g), the person making the payment shall do each of the following:

(1) File a return with the Franchise Tax Board at the time and in the form and manner specified by the Franchise Tax Board.

(2) Provide the payee with a statement at the time and in the form and manner specified by the Franchise Tax Board.

SEC. 16. Section 18670 of the Revenue and Taxation Code is amended to read:

18670. (a) The Franchise Tax Board may by notice, served personally or by first-class mail, require any employer, person, officer or department of the state, political subdivision or agency of the state, including the Regents of the University of California, a city organized under a freeholders' charter, or a political body not a subdivision or agency of the state, having in their possession, or under their control, any credits or other personal property or other things of value, belonging to a taxpayer or to an employer or person who has failed to withhold and transmit amounts due pursuant to this article, to withhold, from the credits or other personal property or other things of value, the amount of any tax, interest, or penalties due from the taxpayer or the amount of any liability incurred by that employer or person for failure to withhold and transmit amounts due from a taxpayer under this part and to transmit the amount withheld to the Franchise Tax Board at the times that it may designate. However, in the case of a depository institution, as defined in Section 19(b) of the Federal Reserve Act (12 U.S.C.A. Sec. 461(b)(1)(A)), amounts due from a taxpayer under this part shall be transmitted to the Franchise Tax Board not less than 10 business days from receipt of the notice. To be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office reported in information returns filed with the Franchise Tax Board, or the branch or office where the credits or other property is held, unless another branch or office is designated by the employer, person, officer or department of the state, political subdivision or

agency of the state, including the Regents of the University of California, a city organized under a freeholders' charter or a political body not a subdivision or agency of the state.

(b) (1) At least 45 days before sending a notice to withhold to the address indicated on the information return, the Franchise Tax Board shall request a depository institution to do either of the following:

(A) Verify that the address on its information return is its designated address for receiving notices to withhold.

(B) Provide the Franchise Tax Board with a designated address for receiving notices to withhold.

(2) Once the depository institution has specified a designated address pursuant to paragraph (1), the Franchise Tax Board shall send all notices to that address unless the depository institution provides notification of another address. The Franchise Tax Board shall send all notices to withhold to a new designated address 30 days after notification.

(3) Failure to verify or provide a designated address within 30 days of receiving the request shall be deemed verification of the address on the information return as the depository institution's designated address.

(c) Any corporation or person failing to withhold the amounts due from any taxpayer and transmit them to the Franchise Tax Board after service of the notice shall be liable for those amounts. However, in the case of a depository institution, if a notice to withhold is mailed to the branch where the account is located or principal banking office, the depository institution shall be liable for a failure to withhold only to the extent that the accounts can be identified in information normally maintained at that location in the ordinary course of business.

SEC. 17. Section 19009 of the Revenue and Taxation Code is amended to read:

19009. (a) Whenever any person or employer who is required to collect, account for, and pay over any tax—

(1) At the time and in the manner prescribed by law or regulations (A) fails to collect, truthfully account for, or pay over the tax, or (B) fails to make deposits, payments, or returns of the tax, and

(2) Is notified, by notice delivered in hand or by registered mail of the failure, then all the requirements of subdivision (b) shall be complied with. In the case of a corporation, partnership, limited liability company, or trust, notice to an officer, partner, manager, member, or trustee, shall, for purposes of this section, be deemed to be sufficient notice to the corporation, partnership, limited liability company, or trust and to all officers, partners, managers, members, trustees, and employees thereof.

(b) Any person or employer who is required to collect, account for, and pay over any tax imposed by Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), if notice

has been delivered to that person or employer in accordance with subdivision (a), shall collect the taxes, which become collectible after delivery of the notice, shall (not later than the end of the second banking day after any amount of the taxes is collected) deposit that amount in a separate account in a bank located within the limits of this state, and shall keep the amount of those taxes in that account until payment over to the Franchise Tax Board. The account shall be designated as a special fund in trust for the Franchise Tax Board, payable to the Franchise Tax Board by that person or employer as trustee.

(c) Whenever the Franchise Tax Board is satisfied, with respect to any notification made under subdivision (a), that all requirements of law and regulations with respect to the taxes, will henceforth be complied with, it may cancel the notification. The cancellation shall take effect at the time as is specified in the notice of the cancellation.

SEC. 18. Section 19011 of the Revenue and Taxation Code is amended to read:

19011. (a) All payments required under this part, regardless of the income (or taxable) year to which the payments apply shall be remitted to the Franchise Tax Board by electronic funds transfer pursuant to Division 11 (commencing with Section 11101) of the Commercial Code, once any of the following conditions are met:

(1) With respect to any corporation, any installment payment of estimated tax made pursuant to Section 19025 or the payment made pursuant to Section 18604 with regard to an extension of time to file exceeds fifty thousand dollars ($50,000) in any income year beginning on or after January 1, 1991, or exceeds twenty thousand dollars ($20,000) in any income year beginning on or after January 1, 1995.

(2) With respect to any corporation, the total tax liability exceeds two hundred thousand dollars ($200,000) in any income year beginning on or after January 1, 1991, or exceeds eighty thousand dollars ($80,000) in any income year beginning on or after January 1, 1995. For purposes of this section, total tax liability shall be the total tax liability as shown on the original return, after any adjustment made pursuant to Section 19051.

(3) A partnership or taxpayer (for purposes of this section, "taxpayer") submits a request to the Franchise Tax Board and is granted permission to make electronic funds transfers.

(b) A taxpayer required to remit payments to the Franchise Tax Board by electronic funds transfer may elect to discontinue making payments where the threshold requirements set forth in paragraphs (1) and (2) of subdivision (a) were not met for the preceding income (or taxable) year. The election shall be made in a form and manner prescribed by the Franchise Tax Board.

(c) Any taxpayer required to remit payment by electronic funds transfer pursuant to this section who makes payment by other means shall pay a penalty of 10 percent of the amount paid, unless it is shown

that the failure to make payment as required was for reasonable cause and was not the result of willful neglect.

(d) Any taxpayer required to remit payments by electronic funds transfer pursuant to this section may request a waiver of those requirements from the Franchise Tax Board. The Franchise Tax Board may grant a waiver only if it determines that the particular amounts paid in excess of the threshold amounts established in this section were not representative of the taxpayer's tax liability. If a taxpayer is granted a waiver, subsequent remittances by electronic funds transfer shall be required only on those terms set forth in the waiver.

(e) The Franchise Tax Board shall accept remittances by electronic funds transfer pursuant to this section no later than January 1, 1993. Electronic funds transfer procedures, in addition to those described in subdivision (f), shall be as prescribed by the Franchise Tax Board. Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(f) For purposes of this section:

(1) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfer shall be accomplished by an automated clearinghouse debit, automated clearinghouse credit, a Federal Reserve Wire Transfer (Fedwire), or by an international funds transfer.

(2) "Automated clearinghouse" means any federal reserve bank, or an organization established by agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and that authorizes an electronic transfer of funds between those banks or bank accounts.

(3) "Automated clearinghouse debit" means a transaction in which any department of the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the taxpayer's bank account and crediting the state's bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction by the taxpayer shall be paid by the state.

(4) "Automated clearinghouse credit" means an automated clearinghouse transaction in which the taxpayer, through its own bank, originates an entry crediting the state's bank account and

debiting its own bank account. Banking costs incurred by the state for the automated clearinghouse credit transaction may be charged to the taxpayer.

(5) "Fedwire" means any transaction originated by the taxpayer and utilizing the national electronic payment system to transfer funds through federal reserve banks, pursuant to which the taxpayer debits its own bank account and credits the state's bank account. Electronic funds transfers may be made by Fedwire only if prior approval is obtained from the Franchise Tax Board and the taxpayer is unable, for reasonable cause, to make payments pursuant to paragraph (3) or (4). Banking costs charged to the taxpayer and to the state may be charged to the taxpayer.

(6) "International funds transfer" means any transaction originated by the taxpayer and utilizing the international electronic payment system to transfer funds, pursuant to which the taxpayer debits its own bank account and credits the state's bank account.

(7) In determining whether a payment or total tax liability exceeds the amounts established in subdivision (a), the income of all taxpayers whose income derived from, or attributable to, sources within this state is required to be determined by a combined report shall be aggregated and the total aggregate amount shall be considered to be the income of a single taxpayer for purposes of determining the payment or total tax liability of a single taxpayer.

SEC. 19. Section 19021 of the Revenue and Taxation Code is amended to read:

19021. In the case of taxpayers subject to the tax imposed by Article 3 (commencing with Section 23181) of Chapter 2 of Part 11, there shall be due and payable on or before the 15th day of the third month following the close of the preceding year from each taxpayer a percentage of its net income as disclosed by its return which is equal to the rate applicable to corporations subject to the tax imposed by Article 2 (commencing with Section 23151) of Chapter 2 of Part 11 plus the personal property tax rate equivalent included in the bank and financial corporation tax rate determination by the Franchise Tax Board pursuant to Sections 23186 and 23186.1. The payment required by this section shall not be less than the minimum tax specified in Section 23153.

SEC. 20. Section 19023 of the Revenue and Taxation Code is amended to read:

19023. For purposes of this article, in the case of a corporation, other than a bank or financial corporation, the term "estimated tax" means the amount which the corporation estimates as the amount of the tax imposed by Part 11 (commencing with Section 23001); but in no event shall the estimated tax of a corporation subject to the tax imposed by Article 2 (commencing with Section 23151) of Chapter 2 of Part 11 be less than the minimum tax prescribed in Section 23153.

SEC. 21. Section 19024 of the Revenue and Taxation Code is amended to read:

19024. (a) In the case of banks and financial corporations, "estimated tax" means the amount which the bank or financial corporation estimates as the amount of the tax imposed by Part 11 (commencing with Section 23001) at the rate determined by the Franchise Tax Board for the preceding year pursuant to Section 23186.1, but in no event shall the estimated tax of a bank or financial corporation be less than the minimum tax prescribed in Section 23153.

(b) In case of an increase or decrease in the rate of tax imposed under Section 23151 (tax on general corporations), a bank or financial corporation shall be required to increase or decrease the rate determined by the Franchise Tax Board for the preceding year by the same amount as the change in the rate imposed under Section 23151 determined in accordance with Section 24251 (relating to computation of tax when law changed).

SEC. 23. Section 19058 of the Revenue and Taxation Code is amended to read:

19058. (a) If the taxpayer omits from gross income an amount properly includable therein which is in excess of 25 percent of the amount of gross income stated in the return, a notice of a proposed deficiency assessment may be mailed to the taxpayer within six years after the return was filed. Additionally, in the case of a corporation, a proceeding in court for the collection of the tax may be commenced without assessment at any time within six years after the return was filed.

(b) For purposes of this section both of the following shall apply:

(1) In the case of a trade or business, the term "gross income" means the total of the amounts received or accrued from the sale of goods or services (if the amounts are required to be shown on the return) prior to diminution by the cost of the sales or service.

(2) In determining the amount omitted from gross income, there shall not be taken into account any amount which is omitted from gross income stated in the return if the amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Franchise Tax Board of the nature and amount of the item.

SEC. 24. Section 19132.5 of the Revenue and Taxation Code is amended to read:

19132.5. (a) In the case of a qualified taxpayer, no penalty shall be assessed under Section 19132 if the return is filed timely (not later than the extended due date granted under Section 18567 or 18604) and the tax required to be paid on or before the due date of the return, without regard to extension, is paid within the following time:

(1) In the case of an individual, partnership, or fiduciary, within six months of the original due date of the return.

(2) In the case of a corporation, within seven months of the original due date of the return.

(b) Any penalty imposed under Section 19132 shall be assessed from the original due date of the return if the taxpayer fails to pay the tax within the time specified in this section.

(c) This section shall apply to payment of the amount shown as tax on the original returns required to be filed during calendar year 1994.

(d) For purposes of this section, "qualified taxpayer" means any corporation, fiduciary, partnership, or individual taxpayer to whom one of the following applies as a result of the Northridge earthquake of January 1994, any related aftershock, or any related casualty:

(1) The qualified taxpayer sustained any significant property loss.

(2) The qualified taxpayer suffered a loss of employment due to property damage suffered by his or her employer.

(3) The qualified taxpayer realized significant loss of business income from a business located within the Northridge earthquake area.

SEC. 25. Section 19141.5 of the Revenue and Taxation Code is amended to read:

19141.5. (a) (1) Section 6038A of the Internal Revenue Code, relating to information with respect to certain foreign-owned corporations, shall apply.

(2) A penalty shall be imposed under this part for failure to furnish information or maintain records and that penalty shall be determined in accordance with Section 6038A of the Internal Revenue Code.

(3) Section 11314 of Public Law 101-508, relating to application of amendments made by Section 7403 of the Revenue Reconciliation Act of 1989 to taxable years beginning on or before July 10, 1989, shall apply.

(4) Section 6038A(e) of the Internal Revenue Code, relating to enforcement of requests for certain records, is modified as follows:

(A) Each reference to Section 7602, 7603, or 7604 of the Internal Revenue Code shall instead refer to Section 19504.

(B) Each reference to "summons" shall instead refer to "subpoena duces tecum."

(C) Section 6038A(e)(4)(C) of the Internal Revenue Code shall refer to "superior courts of the State of California for the Counties of Los Angeles, Sacramento, and San Diego, and for the City and County of San Francisco," instead of "United States district court for the district in which the person (to whom the summons is issued) resides or is found."

(b) In the case of a corporation, each of the following shall apply:

(1) Section 6038B of the Internal Revenue Code, relating to notice of certain transfers to foreign persons, shall apply.

(2) A penalty shall be imposed under this part for failure to furnish information or maintain records and that penalty shall be determined in accordance with Section 6038B of the Internal Revenue Code.

(c) (1) Section 6038C of the Internal Revenue Code, relating to information with respect to foreign corporations engaged in United States business, shall apply.

(2) A penalty shall be imposed under this part for failure to furnish information or maintain records and that penalty shall be determined in accordance with Section 6038C of the Internal Revenue Code.

(3) Section 6038C(d) of the Internal Revenue Code, relating to enforcement of requests for certain records, is modified as follows:

(A) Each reference to Section 7602, 7603, or 7604 of the Internal Revenue Code shall instead refer to Section 19504.

(B) Each reference to "summons" shall instead refer to "subpoena duces tecum."

(d) For purposes of this part, the information required to be filed with the Franchise Tax Board pursuant to this section shall be a copy of the information filed with the Internal Revenue Service.

(e) For purposes of this section, each of the following shall apply:

(1) Section 7701(a)(4) of the Internal Revenue Code, relating to the term "domestic," shall apply.

(2) Section 7701(a)(5) of the Internal Revenue Code, relating to the term "foreign," shall apply.

(3) Section 7701(a)(30) of the Internal Revenue Code, relating to the term "United States person," shall apply. However, the term "United States person" shall not include any corporation that is not subject to the tax imposed under Chapter 2 (commencing with Section 23101), Chapter 2.5 (commencing with Section 23400), or Chapter 3 (commencing with Section 23501), of Part 11.

SEC. 26. Section 19141.6 of the Revenue and Taxation Code is amended to read:

19141.6. (a) Each taxpayer determining its income subject to tax pursuant to Section 25101 or electing to file pursuant to Section 25110 shall, for income years beginning on or after January 1, 1994, maintain (in the location, in the manner, and to the extent prescribed in regulations which shall be promulgated by the Franchise Tax Board on or before December 31, 1995) and make available upon request all of the following:

(1) Any records as may be appropriate to determine the correct treatment of the components that are a part of one or more unitary businesses for purposes of determining the income derived from or attributable to this state pursuant to Section 25101 or 25110.

(2) Any records as may be appropriate to determine the correct treatment of amounts that are attributable to the classification of an item as business or nonbusiness income for purposes of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(3) Any records as may be appropriate to determine the correct treatment of the apportionment factors for purposes of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(4) Documents and information, including any questionnaires completed and submitted to the Internal Revenue Service that are necessary to audit issues involving attribution of income to the United States or foreign jurisdictions under Section 882 or Subpart F of Part III of Subchapter N, or similar sections, of the Internal Revenue Code.

(b) For purposes of this section:

(1) Information for any year shall be retained for that period of time in which the taxpayers' income or franchise tax liability to this state may be subject to adjustment, including all periods in which additional income or franchise taxes may be assessed, not to exceed eight years from the due date or extended due date of the return, or during which a protest is pending before the Franchise Tax Board, or an appeal is pending before the State Board of Equalization or a lawsuit is pending in the courts of this state or the United States with respect to California franchise or income tax.

(2) "Related party" means corporations that are related because one owns or controls directly or indirectly more than 50 percent of the stock of the other or because more than 50 percent of the voting stock of each is owned or controlled, directly or indirectly, by the same interests.

(3) "Records" includes any books, papers, or other data.

(c) (1) If a corporation subject to this section fails to maintain or fails to cause another to maintain records as required by subdivision (a), that corporation shall pay a penalty of ten thousand dollars ($10,000) for each income year with respect to which the failure occurs.

(2) If any failure described in paragraph (1) continues for more than 90 days after the day on which the Franchise Tax Board mails notice of the failure to the corporation, that corporation shall pay a penalty (in addition to the amount required under paragraph (1)) of ten thousand dollars ($10,000) for each 30-day period (or fraction thereof) during which the failure continues after the expiration of the 90-day period. The additional penalty imposed by this subdivision shall not exceed a maximum of fifty thousand dollars ($50,000) if the failure to maintain or the failure to cause another to maintain is not willful. This maximum shall apply with respect to income years beginning on or after January 1, 1994, and before the earlier of the first day of the month following the month in which regulations are adopted pursuant to this section or December 31, 1995.

(3) For purposes of this section, the time prescribed by regulations to maintain records (and the beginning of the 90-day period after notice by the Franchise Tax Board) shall be treated as not earlier than the last day on which (as shown to the satisfaction of the Franchise Tax Board) reasonable cause existed for failure to maintain the records.

(d) (1) The Franchise Tax Board may apply the rules of paragraph (2) whether or not the board begins a proceeding to

enforce a subpoena, or subpoena duces tecum, if subparagraphs (A), (B), and (C) apply:

(A) For purposes of determining the correct treatment under Part 11 (commencing with Section 23001) of the items described in subdivision (a), the Franchise Tax Board issues a subpoena or subpoena duces tecum to a corporation to produce (either directly or as agent for the related party) any records or testimony.

(B) The subpoena or subpoena duces tecum is not quashed in a proceeding begun under paragraph (3) and is not determined to be invalid in a proceeding begun under Section 19504 to enforce the subpoena or subpoena duces tecum.

(C) The corporation does not substantially comply in a timely manner with the subpoena or subpoena duces tecum and the Franchise Tax Board has sent by certified or registered mail a notice to that corporation that it has not substantially complied.

(D) If the corporation fails to maintain or fails to cause another to maintain records as required by subdivision (a), and by reason of that failure, the subpoena, or subpoena duces tecum, is quashed in a proceeding described in subparagraph (B) or the corporation is not able to provide the records requested in the subpoena or subpoena duces tecum, the Franchise Tax Board may apply the rules of paragraph (2) to any of the items described in subdivision (a) to which the records relate.

(2) (A) All of the following shall be determined by the Franchise Tax Board in the Franchise Tax Board's sole discretion from the Franchise Tax Board's own knowledge or from information the Franchise Tax Board may obtain through testimony or otherwise:

(i) The components that are a part of one or more unitary businesses for purposes of determining the income derived from or attributable to this state pursuant to Section 25101 or 25110.

(ii) Amounts that are attributable to the classification of an item as business or nonbusiness income for purposes of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(iii) The apportionment factors for purposes of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(iv) The correct amount of income under Section 882 of, or Subpart F of Part III of, Subchapter N of, or similar sections of, the Internal Revenue Code.

(B) This paragraph shall apply to determine the correct treatment of the items described in subdivision (a) unless the corporation is authorized by its related parties (in the manner and at the time as the Franchise Tax Board shall prescribe) to act as the related parties' limited agent solely for purposes of applying Section 19504 with respect to any request by the Franchise Tax Board to examine records or produce testimony related to any item described in subdivision (a) or with respect to any subpoena or subpoena duces tecum for the records or testimony. The appearance of persons or the production of records by reason of the corporation being an agent

shall not subject those persons or records to legal process for any purpose other than determining the correct treatment under Part 11 of the items described in subdivision (a).

(C) Determinations made in the sole discretion of the Franchise Tax Board pursuant to this paragraph may be appealed to the State Board of Equalization, in the manner and at a time, as provided by Section 19045 or 19324, or may be the subject of an action to recover tax, in the manner and at a time, as provided by Section 19382. The review of determinations by the board or the court shall be limited to whether the determinations were arbitrary or capricious, or are not supported by substantial evidence.

(3) (A) Notwithstanding any other law or rule of law, any reporting corporation to which the Franchise Tax Board issues a subpoena or subpoena duces tecum referred to in subparagraph (A) of paragraph (1) shall have the right to begin a proceeding to quash the subpoena or subpoena duces tecum not later than the 90th day after the subpoena or subpoena duces tecum was issued. In that proceeding, the Franchise Tax Board may seek to compel compliance with the subpoena or subpoena duces tecum.

(B) Notwithstanding any other law or rule of law, any reporting bank or corporation that has been notified by the Franchise Tax Board that it has determined that the corporation has not substantially complied with a subpoena or subpoena duces tecum referred to in paragraph (1) shall have the right to begin a proceeding to review the determination not later than the 90th day after the day on which the notice referred to in subparagraph (C) of paragraph (1) was mailed. If the proceeding is not begun on or before the 90th day, the determination by the Franchise Tax Board shall be binding and shall not be reviewed by any court.

(C) The superior courts of the State of California for the Counties of Los Angeles, Sacramento, and San Diego, and for the City and County of San Francisco shall have jurisdiction to hear any proceeding brought under subparagraphs (A) and (B). Any order or other determination in the proceeding shall be treated as a final order that may be appealed.

(D) If any corporation takes any action as provided in subparagraphs (A) and (B), the running of any period of limitations under Sections 19057 to 19064, inclusive (relating to the assessment and collection of tax), or under Section 19704 (relating to criminal prosecutions) with respect to that corporation shall be suspended for the period during which the proceedings, and appeals therein, are pending. In no event shall any period expire before the 90th day after the day on which there is a final determination in the proceeding.

SEC. 27. Section 19147 of the Revenue and Taxation Code is amended to read:

19147. (a) Notwithstanding Sections 19142 to 19145, inclusive, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments

of estimated tax paid on or before the last date prescribed for the payment of the installment equals or exceeds the amount which would have been required to be paid on or before that date if the estimated tax were whichever of the following is the lesser:

(1) (A) The tax shown on the return of the taxpayer for the preceding income year if a return showing a liability for tax was filed by the taxpayer for the preceding year and that preceding year was a year of 12 months. The tax shown on the return, in the case of the tax imposed by Article 3 (commencing with Section 23181) of Chapter 2 of Part 11, means the amount of tax shown on the return for the income year as prescribed in Section 19021.

(B) In the case of a large corporation, subparagraph (A) shall not apply, except as provided in clauses (i) and (ii).

(i) Subparagraph (A) shall apply for purposes of determining the amount of the first required installment for any income year.

(ii) Any reduction in the first required installment by reason of clause (i) shall be recaptured by increasing the amount of the next required installment by the amount of that reduction.

(2) (A) An amount equal to the applicable percentage specified in Section 19144 of the tax for the income year computed by placing on an annualized basis the taxable income:

(i) For the first three months of the income year, in the case of the installment required to be paid in the fourth month.

(ii) For the first three months of the income year, in the case of the installment required to be paid in the sixth month.

(iii) For the first six months of the income year in the case of the installment required to be paid in the ninth month.

(iv) For the first nine months of the income year, in the case of the installment required to be paid in the 12th month of the taxable year.

(B) (i) If the taxpayer makes an election under this clause, each of the following shall apply:

(I) Clause (i) of subparagraph (A) shall be applied by substituting "two months" for "three months."

(II) Clause (ii) of subparagraph (A) shall be applied by substituting "four months" for "three months."

(III) Clause (iii) of subparagraph (A) shall be applied by substituting "seven months" for "six months."

(IV) Clause (iv) of subparagraph (A) shall be applied by substituting "ten months" for "nine months."

(ii) If the taxpayer makes an election under this clause, each of the following shall apply:

(I) Clause (ii) of subparagraph (A) shall be applied by substituting "five months" for "three months."

(II) Clause (iii) of subparagraph (A) shall be applied by substituting "eight months" for "six months."

(III) Clause (iv) of subparagraph (A) shall be applied by substituting "eleven months" for the "nine months."

(iii) An election under clause (i) or (ii) shall apply to the income year for which the election is made and shall be effective only if the election is made on or before the date required for the payment of the first required installment for that income year.

(iv) This subparagraph shall apply to income years beginning on or after January 1, 1997.

(C) For purposes of this paragraph, the taxable income shall be placed on an annualized basis in the following manner:

(i) Multiply by 12 the taxable income referred to in subparagraph (A).

(ii) Divide the resulting amount by the number of months in the income year referred to in subparagraph (A).

"Taxable income" as used in this paragraph means "net income" includable in the measure of tax or "alternative minimum taxable income" (as defined by Section 23455).

(D) In the case of any corporation which is subject to the tax imposed under Section 23731, any reference to taxable income shall be treated as including a reference to unrelated business taxable income and, except in the case of an election under subparagraph (B), each of the following shall apply:

(i) Clause (i) of subparagraph (A) shall be applied by substituting "two months" for "three months."

(ii) Clause (ii) of subparagraph (A) shall be applied by substituting "four months" for "three months."

(iii) Clause (iii) of subparagraph (A) shall be applied by substituting "seven months" for "six months."

(iv) Clause (iv) of subparagraph (A) shall be applied by substituting "ten months" for "nine months."

(3) The applicable percentage specified in Section 19144 or more of the tax for the income year was paid by withholding of tax pursuant to Section 18662.

(4) The applicable percentage specified in Section 19144 or more of the net income for the income year consists of items from which an amount was withheld pursuant to Section 18662 and the amount of the first installment, including payments applied pursuant to subdivision (c) of Section 19025, equals at least the minimum franchise tax specified in Section 23153.

(b) (1) For purposes of this section, "large corporation" means any corporation if that corporation (or any predecessor corporation) had taxable income (computed without regard to net operating loss deductions) of one million dollars ($1,000,000) or more for any income year during the testing period.

(2) For purposes of this subdivision, "testing period" means the three income years immediately preceding the income year involved.

SEC. 28. Section 19164 of the Revenue and Taxation Code is amended to read:

19164. (a) (1) An accuracy-related penalty shall be imposed under this part and shall be determined in accordance with the provisions of Section 6662 of the Internal Revenue Code, relating to imposition of accuracy-related penalty.

(2) With respect to corporations, this subdivision shall apply to all of the following:

(A) All income years beginning on or after January 1, 1990.

(B) Any other income year for which an assessment is made after July 16, 1991.

(b) A fraud penalty shall be imposed under this part and shall be determined in accordance with the provisions of Section 6663 of the Internal Revenue Code, relating to imposition of fraud penalty.

(c) The provisions of Section 6664 of the Internal Revenue Code, relating to definitions and special rules, shall apply.

(d) The provisions of Section 6665 of the Internal Revenue Code, relating to applicable rules, shall apply.

SEC. 29. Section 19192 of the Revenue and Taxation Code is amended to read:

19192. For purposes of this article:

(a) (1) "Qualified business entity" means an entity that is all of the following:

(A) An entity that is a corporation, as defined in Section 23038.

(B) A business entity, including any predecessors to the business entity, that previously has never filed a return with the Franchise Tax Board pursuant to this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23011).

(C) A business entity, including any predecessors to the business entity, that previously has not been the subject of an inquiry by the Franchise Tax Board with respect to liability for any of the taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(D) A business entity that voluntarily comes forward prior to any unilateral contact from the Franchise Tax Board, makes application for a voluntary disclosure agreement in a form and manner prescribed by the Franchise Tax Board, and makes a full and accurate statement of its activities in this state for the six immediately preceding taxable or income years.

(2) (A) Notwithstanding paragraph (1), a qualified business entity does not include any of the following:

(i) A business entity that is organized and existing under the laws of this state.

(ii) A business entity that is qualified or registered with the office of the Secretary of State.

(iii) A business entity that maintains and staffs a permanent facility in this state.

(B) For purposes of this paragraph, the storing of materials, goods, or products in a public warehouse pursuant to a public warehouse

contract does not constitute maintaining a permanent facility in this state.

(3) "Qualified shareholder" means an individual that is all of the following:

(A) A nonresident on the signing date of the voluntary disclosure agreement.

(B) A shareholder of an S corporation (defined in Section 23800) that has applied for a voluntary disclosure agreement under this article under which all material facts pertinent to the shareholder's liability would be disclosed on that S corporation's voluntary disclosure agreement as required under clause (i) of subparagraph (A) of paragraph (2) of subdivision (d) of Section 19191.

(4) Notwithstanding paragraph (3), subparagraph (B) of paragraph (1) of subdivision (d) of Section 19191 shall not apply to any of the six taxable years immediately preceding the signing date that the qualified shareholder was a California resident required to file a California tax return, nor to any penalties or additions to tax attributable to income other than the California source income from the S corporation that filed an application under this article.

(b) "Signing date" of the voluntary disclosure agreement means the date on which a person duly authorized by the Franchise Tax Board signs the agreement.

(c) The amendments to this section made by the act adding this subdivision shall apply to taxable or income years beginning on or after January 1, 1997.

SEC. 30. Section 19254 of the Revenue and Taxation Code is amended to read:

19254. (a) (1) If any person, other than an organization exempt from taxation under Section 23701, fails to pay any amount of tax, penalty, addition to tax, interest, or other liability imposed and delinquent under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part, a collection cost recovery fee shall be imposed if the Franchise Tax Board has mailed notice to that person for payment that advises that continued failure to pay the amount due may result in collection action, including the imposition of a collection cost recovery fee. The collection cost recovery fee shall be in the amount of:

(A) In the case of an individual, partnership, limited liability company classified as a partnership for California income tax purposes, or fiduciary, eighty-eight dollars ($88) or an amount as adjusted under subdivision (b).

(B) In the case of a corporation or limited liability company classified as a corporation for California income tax purposes, one hundred sixty-six dollars ($166) or an amount as adjusted under subdivision (b).

(2) If any person, other than an organization exempt from taxation under Section 23701, fails or refuses to make and file a tax return required by Part 10 (commencing with Section 17001), Part

11 (commencing with Section 23001), or this part, within 25 days after formal legal demand to file the tax return is mailed to that person by the Franchise Tax Board, the Franchise Tax Board shall impose a filing enforcement cost recovery fee in the amount of:

(A) In the case of an individual, partnership, limited liability company classified as a partnership for California income tax purposes, or fiduciary, fifty-one dollars ($51) or an amount as adjusted under subdivision (b).

(B) In the case of a corporation or limited liability company classified as a corporation for California income tax purposes, one hundred nineteen dollars ($119) or an amount as adjusted under subdivision (b).

(b) For fees imposed under this section during the fiscal year 1993–94 and fiscal years thereafter, the amount of those fees shall be set to reflect actual costs and shall be specified in the annual Budget Act.

(c) Interest shall not accrue with respect to the cost recovery fees provided by this section.

(d) The amounts provided by this section are obligations imposed by this part and may be collected in any manner provided under this part for the collection of a tax.

(e) Subdivision (a) is operative with respect to the notices for payment or formal legal demands to file, either of which is mailed on or after September 15, 1992.

(f) The Franchise Tax Board shall determine the total amount of the cost recovery fees collected or accrued through June 30, 1993, and shall notify the Controller of that amount. The Controller shall transfer that amount to the Franchise Tax Board, and that amount is hereby appropriated to the board for the 1992–93 fiscal year for reimbursement of its collection and filing enforcement efforts.

SEC. 31. Section 19263 of the Revenue and Taxation Code is amended to read:

19263. At any sale authorized by Section 19262, the property shall be sold by the Franchise Tax Board or its duly authorized agent in accordance with law and the notice of sale, and the Franchise Tax Board shall deliver to the purchaser a bill of sale for the property so sold and the bill of sale shall vest title in the purchaser. The unsold portion of any property so seized may be left at the place of sale at the risk of the taxpayer. If, upon any sale, the moneys so received exceed the amount of all taxes, interest, penalties and costs due the state from the taxpayer, any excess shall be returned to the taxpayer and a receipt therefor obtained. However, if any person having an interest in or lien upon the property has filed with the Franchise Tax Board prior to any sale notice of the interest or lien, the Franchise Tax Board shall withhold any excess pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction.

If, for any reason, the receipt of the taxpayer is not available, the Franchise Tax Board shall deposit the excess moneys with the

Treasurer, as trustee for the owner, subject to the order of the taxpayer or his or her trust or estate, or in the case of a corporation, its successor through reorganization, merger, or consolidation, or its stockholders upon dissolution.

SEC. 35. Section 19301 of the Revenue and Taxation Code is amended to read:

19301. (a) If the Franchise Tax Board or the board, as the case may be, finds that there has been an overpayment of any liability imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part by a taxpayer for any year for any reason, the amount of the overpayment may be credited against any amount then due from the taxpayer and the balance shall be refunded to the taxpayer.

(b) In the case of a joint return filed under Section 18521, the amount of the overpayment may be credited against the amount then due from both taxpayers and the balance shall be refunded to both taxpayers in the names under which the return was paid.

(c) In the case of a corporation, the balance shall be refunded to the taxpayer or its successor through reorganization, merger, or consolidation, or to its shareholders upon dissolution.

SEC. 36. Section 19340 of the Revenue and Taxation Code is amended to read:

19340. Interest shall be allowed and paid on any overpayment in respect of any tax, at the adjusted annual rate established pursuant to Section 19521 as follows:

(a) In the case of a credit, from the date of the overpayment to the due date of the amount for which the credit is allowed. Any interest allowed on any credit shall first be credited on any amounts due from the taxpayer under Part 10 (commencing with Section 17001), this part, or Part 11 (commencing with Section 23001).

(b) In the case of a refund, including a refund in excess of tax liability as prescribed in subdivision (j) of Section 17053.5, from the date of the overpayment to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the Franchise Tax Board.

SEC. 37. Section 19392 of the Revenue and Taxation Code is amended to read:

19392. If judgment is rendered against the Franchise Tax Board, the amount thereof shall first be credited against any taxes and interest due from the taxpayer and the remainder refunded to the taxpayer or his or her trust or estate, or in the case of a corporation, its successor through reorganization, merger, or consolidation, or its stockholders upon dissolution, by the Treasurer on warrants drawn by the Controller.

SEC. 38. Section 19411 of the Revenue and Taxation Code is amended to read:

19411. The Franchise Tax Board may recover any refund or credit or any portion thereof which is erroneously made or allowed,

together with interest at the adjusted annual rate established pursuant to Section 19521 from the date demand for recovery was made, in an action brought in a court of competent jurisdiction in the County of Sacramento in the name of the people of the State of California within whichever of the following period expires the later:

(a) Two years after the refund or credit was made.

(b) During the period within which the Franchise Tax Board may mail a notice of proposed additional assessment.

(c) In the case of a corporation, interest shall be computed from the date the refund was made or the credit allowed, instead of the date a demand for recovery was made.

SEC. 40. Section 19542 of the Revenue and Taxation Code is amended to read:

19542. Except as otherwise provided in this article and as required to administer subdivision (b) of Section 19005, it is a misdemeanor for the Franchise Tax Board or any member thereof, or any deputy, agent, clerk, or other officer or employee of the state (including its political subdivisions), or any former officer or employee or other individual, who in the course of his or her employment or duty has or had access to returns, reports, or documents required to be filed under this part, to disclose or make known in any manner information as to the amount of income or any particulars (including the business affairs of a corporation) set forth or disclosed therein.

SEC. 41. Section 19563 of the Revenue and Taxation Code is amended to read:

19563. This article does not prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns and the items thereof, or the publication of the percentage of dividends paid by any corporation that is deductible by the recipient under Part 11 (commencing with Section 23001).

SEC. 42. Section 19701 of the Revenue and Taxation Code is amended to read:

19701. Any person who does any of the following is liable for a penalty of not more than five thousand dollars ($5,000):

(a) With or without intent to evade any requirement of Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part or any lawful requirement of the Franchise Tax Board, fails to file any return or to supply any information required, or who, with or without that intent, makes, renders, signs, or verifies any false or fraudulent return or statement, or supplies any false or fraudulent information.

(b) Aids, abets, advises, encourages, or counsels any person to evade the tax imposed by Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) by not filing any return or supplying any information required under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part, or, by making, rendering, signing, or verifying any false or

fraudulent return or statement, or by supplying false or fraudulent information.

(c) Under this part, is required to pay any estimated tax or tax, who willfully fails to pay that estimated tax or tax, at the time or times required by law or regulations.

The penalty shall be recovered in the name of the people in any court of competent jurisdiction. Counsel for the Franchise Tax Board may, upon request of the district attorney or other prosecuting attorney, assist the prosecuting attorney in presenting the law or facts to recover the penalty at the trial of a criminal proceeding for violation of this section.

That person is also guilty of a misdemeanor and shall upon conviction be fined not to exceed five thousand dollars ($5,000) or be imprisoned not to exceed one year, or both, at the discretion of the court, together with costs of investigation and prosecution.

(d) For purposes of subdivision (a), the president of a corporation, or the chief operating officer, is the person presumed to be responsible for filing any return or supplying information required from that corporation.

SEC. 43. Section 19705 of the Revenue and Taxation Code is amended to read:

19705. (a) Any person who does any of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned not more than three years, or both, together with the costs of investigation and prosecution:

(1) Willfully makes and subscribes any return, statement, or other document, that contains or is verified by a written declaration that it is made under penalty of perjury, and he or she does not believe to be true and correct as to every material matter.

(2) Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the Personal Income Tax Law or the Bank and Corporation Tax Law, of a return, affidavit, claim, or other document, that is fraudulent or is false as to any material matter, whether or not that falsity or fraud is with the knowledge or consent of the person authorized or required to present that return, affidavit, claim, or document.

(3) Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the Personal Income Tax Law or the Bank and Corporation Tax Law, or by any regulation pursuant to that law, or procures the same to be falsely or fraudulently executed or advises, aids in, or connives at that execution.

(4) Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by Chapter 5 (commencing with Section 19201);

or Chapter 8 (commencing with Section 688.010) of Division 1 of, and Chapter 5 (commencing with Section 706.010) of Division 2 of, Title 9 of the Code of Civil Procedure, with intent to evade or defeat the assessment or collection of any tax, additions to tax, penalty, or interest imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(5) In connection with any settlement under Section 19442, or offer of that settlement, or in connection with any closing agreement under Section 19441 or offer to enter into that agreement, willfully does any of the following:

(A) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(B) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(b) In the case of a corporation, the fifty thousand dollars ($50,000) limitation specified in subdivision (a) shall be increased to two hundred thousand dollars ($200,000).

(c) The fact that an individual's name is signed to a return, statement, or other document filed, including a return, statement, or other document filed using electronic technology pursuant to Section 18621.5, shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him or her.

(d) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or which owns or controls the taxpayer, directly or indirectly.

SEC. 44. Section 19706 of the Revenue and Taxation Code is amended to read:

19706. Any person or any officer or employee of any corporation who, within the time required by or under the provisions of this part, willfully fails to file any return or to supply any information with intent to evade any tax imposed by Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), or who, willfully and with like intent, makes, renders, signs, or verifies any false or fraudulent return or statement or supplies any false or fraudulent information, is punishable by imprisonment in the county jail not to exceed one year, or in the state prison, or by fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, at the discretion of the court, together with the costs of investigation and prosecution.

SEC. 45. Section 19719 of the Revenue and Taxation Code is amended to read:

19719. Any person who attempts or purports to exercise the powers, rights, and privileges of a corporation that has been suspended pursuant to Section 23301 or who transacts or attempts to transact intrastate business in this state on behalf of a foreign corporation, the rights and privileges of which have been forfeited pursuant to the section, is punishable by a fine of not less than two hundred fifty dollars ($250) and not exceeding one thousand dollars ($1,000), or by imprisonment not exceeding one year, or both fine and imprisonment.

SEC. 46. Section 23037 of the Revenue and Taxation Code is amended to read:

23037. "Taxpayer" means any person subject to the tax imposed under Chapter 2 (commencing with Section 23101), Chapter 2.5 (commencing with Section 23400), or Chapter 3 (commencing with Section 23501).

SEC. 47. Section 23038 of the Revenue and Taxation Code is amended to read:

23038. (a) "Corporation" includes every corporation except corporations expressly exempt from the tax by this part or the Constitution of this state.

(b) (1) For the purposes of the tax imposed under Chapter 3 (commencing with Section 23501), "corporation" also includes associations (including nonprofit associations that perform services, borrow money or own property), other than banking associations, and Massachusetts or business trusts. For the purposes of this part, a Massachusetts or business trust includes every business organization consisting essentially of an arrangement whereby property is conveyed to one, or more than one, trustee for purposes other than the mere conservation of assets, collecting and disbursing of fixed or periodic income, or the securing of an obligation.

(2) In addition to the above, for purposes of the tax imposed under Chapter 2 (commencing with Section 23101) for the purpose of exercising its franchise within this state, "corporation" also includes any limited liability company that is classified as an association for California tax purposes.

(3) "Corporation" includes any "corporation" operated by any receiver, liquidator, referee, trustee or other officers or agents appointed by any court, or an assignee for the benefit of creditors.

"Corporation" includes any professional corporation incorporated pursuant to Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code.

(4) Notwithstanding the above, "corporation" also includes a trust organized and operated exclusively for purposes contained in Section 23701d.

SEC. 47.5. Section 23038 of the Revenue and Taxation Code is amended to read:

23038. (a) "Corporation" includes every corporation except corporations expressly exempt from the tax by this part or the Constitution of this state.

(b) (1) For the purposes of the tax imposed under Chapter 3 (commencing with Section 23501), "corporation" also includes associations (including nonprofit associations that perform services, borrow money or own property), other than banking associations, and Massachusetts or business trusts. For the purposes of this part, a Massachusetts or business trust includes every business organization consisting essentially of an arrangement whereby property is conveyed to one, or more than one, trustee for purposes other than the mere conservation of assets, collecting and disbursing of fixed or periodic income, or the securing of an obligation. This paragraph shall apply for income or taxable years beginning before January 1, 1997.

(2) (A) For the purposes of the tax imposed under Chapter 3 (commencing with Section 23501), "corporation" also includes associations (other than banking associations but including nonprofit associations that perform services, borrow money or own property), business trusts, and other business entities classified as associations.

(B) (i) For purposes of the preceding subparagraph, the classification of a business entity (including a business trust) as an association taxable as a corporation (under Chapter 3 (commencing with Section 23501)) shall be determined under regulations of the Franchise Tax Board, which shall be consistent with federal regulations as in effect January 1, 1997, that classify a business entity as a partnership or an association taxable as a corporation or disregard the separate existence of certain business entities for tax purposes.

(ii) The classification of an eligible business entity as a partnership or an association taxable as a corporation for purposes of this part, Part 10 (commencing with Section 17001), and Part 10.2 (commencing with Section 18401) shall be the same as the classification of the entity for federal tax purposes.

(iii) If the separate existence of an eligible business entity is disregarded for federal tax purposes, the separate existence of that business entity shall be disregarded for purposes of this part, Part 10 (commencing with Section 17001) and Part 10.2 (commencing with Section 18401), other than Section 17941 (relating to the tax of a limited liability company), Section 17942 (relating to the fee of a limited liability company), Section 18633.5 (relating to the return of a limited liability company), and Sections 17039 and 23036 (relating to tax credits).

(C) Notwithstanding clauses (ii) and (iii) of subparagraph (B), an eligible business entity that, for any income year beginning within the 60-month period preceding January 1, 1997, was properly classified as an association taxable as a corporation for California tax purposes shall continue to be an association taxable as a corporation until it elects, under regulations issued pursuant to subparagraph

(B), to be classified or disregarded the same as the entity is classified or disregarded for federal tax purposes. The preceding sentence shall not apply to any entity that, during the 60-month period preceding January 1, 1997, was not doing business in this state, did not derive income from sources within this state, and had no owner who was a resident of this state.

(D) This paragraph shall apply for income or taxable years beginning on and after January 1, 1997.

(c) In addition to the above, for purposes of the tax imposed under Chapter 2 (commencing with Section 23101) for the purpose of exercising its franchise within this state, "corporation" also includes any limited liability company that is classified as an association for California tax purposes.

(d) "Corporation" includes any "corporation" operated by any receiver, liquidator, referee, trustee or other officers or agents appointed by any court, or an assignee for the benefit of creditors.

"Corporation" includes any professional corporation incorporated pursuant to Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code.

(e) Notwithstanding the above, "corporation" also includes a trust organized and operated exclusively for purposes contained in Section 23701d.

SEC. 48. Section 23040.1 of the Revenue and Taxation Code is amended to read:

23040.1. (a) Notwithstanding Sections 23040 and 25101, income derived from or attributable to sources within this state shall not include the distributive share of interest, dividends, and gains from the sale or exchange of qualifying investment securities derived by a corporation that is a partner in a partnership that qualifies as an investment partnership under Section 17955, whether or not the partnership has a usual place of business in this state, if the income from the partnership is the corporation's only income derived from or attributable to sources within this state.

(b) Subdivision (a) shall not apply to a corporation that participates in the management of the investment activities of the investment partnership or that is engaged in a unitary business with another corporation or partnership that participates in the management of the investment activities of the partnership or has income derived from or attributable to sources within this state other than income described in subdivision (a).

(c) For purposes of this section:

(1) "Investment partnership" means a partnership that meets both of the following requirements:

(A) No less than 90 percent of the partnership's cost of its total assets consist of qualifying investment securities, deposits at banks or other financial institutions, and office space and equipment reasonably necessary to carry on its activities as an investment partnership.

(B) No less than 90 percent of its gross income consists of interest, dividends, and gains from the sale or exchange of qualifying investment securities.

(2) (A) "Qualifying investment securities" include all of the following:

(i) Common stock, including preferred or debt securities convertible into common stock, and preferred stock.

(ii) Bonds, debentures, and other debt securities.

(iii) Foreign and domestic currency deposits or equivalents and securities convertible into foreign securities.

(iv) Mortgage- or asset-backed securities secured by federal, state, or local governmental agencies.

(v) Repurchase agreements and loan participations.

(vi) Foreign currency exchange contracts and forward and futures contracts on foreign currencies.

(vii) Stock and bond index securities and futures contracts, and other similar financial securities and futures contracts on those securities.

(viii) Options for the purchase or sale of any of the securities, currencies, contracts, or financial instruments described in clauses (i) to (vii), inclusive.

(ix) Regulated futures contracts.

(B) "Qualifying investment securities" does not include an interest in a partnership unless that partnership is itself an investment partnership.

SEC. 49. Section 23095 of the Revenue and Taxation Code is amended to read:

23095. No decree of dissolution, withdrawal, or cancellation shall be made and entered by any court, nor shall the county clerk of any county or the Secretary of State file any decree of dissolution, withdrawal, or cancellation or any other document by which the term of existence of the limited liability company shall be reduced or terminated, nor shall the Secretary of State file any certificate of the surrender or cancellation by a foreign limited liability company of its rights to do intrastate business in this state unless the limited liability company obtains from the Franchise Tax Board and files from the court, county clerk, or Secretary of State as the case may be, a tax clearance certificate indicating that the Franchise Tax Board is satisfied from the available evidence that all taxes and fees imposed by this chapter have been paid or are secured by bond, deposit, or otherwise. Within 30 days after receiving a request for a certificate, the Franchise Tax Board shall either issue the certificate or notify the person requesting the certificate of the amount of tax or fees that must be paid or the amount of bond, deposit, or other security that must be furnished as a condition of issuing the certificate. The issuance of the certificate shall not relieve the taxpayer or any individual or corporation from liability for any taxes, fees, penalties,

or interest imposed by this code. The Franchise Tax Board shall furnish a copy of the tax clearance certificate to the Secretary of State.

SEC. 50. Section 23098 of the Revenue and Taxation Code is amended to read:

23098. No decree of dissolution, withdrawal, or cancellation shall be made and entered by any court, nor shall the county clerk of any county or the Secretary of State file any decree of dissolution, withdrawal, or cancellation or any other document by which the term of existence of the registered limited liability partnership shall be reduced or terminated, nor shall the Secretary of State file any amended registration or notice by a foreign limited liability partnership that its rights to do intrastate business in this state have ceased or of its dissolution and winding up, unless the registered limited liability partnership or foreign limited liability partnership obtains from the Franchise Tax Board and files with the court, county clerk, or Secretary of State, as the case may be, a tax clearance certificate indicating that the Franchise Tax Board is satisfied from the available evidence that all taxes imposed by this chapter have been paid or are secured by bond, deposit, or otherwise. Within 30 days after receiving a request for a certificate, the Franchise Tax Board shall either issue the certificate or notify the person requesting the certificate of the amount of tax or fees that must be paid or the amount of bond, deposit, or other security that must be furnished as a condition of issuing the certificate. The issuance of the certificate shall not relieve the taxpayer or any individual or corporation from liability for any taxes, fees, penalties, or interest imposed by this code. The Franchise Tax Board shall furnish a copy of the tax clearance certificate to the Secretary of State.

SEC. 52. Section 23151 of the Revenue and Taxation Code is amended to read:

23151. (a) With the exception of banks and financial corporations, every corporation doing business within the limits of this state and not expressly exempted from taxation by the provisions of the Constitution of this state or by this part, shall annually pay to the state, for the privilege of exercising its corporate franchises within this state, a tax according to or measured by its net income, to be computed at the rate of 7.6 percent upon the basis of its net income for the next preceding income year, or if greater, the minimum tax specified in Section 23153.

(b) For calendar or fiscal years ending after June 30, 1973, the rate of tax shall be 9 percent instead of 7.6 percent as provided by subdivision (a).

(c) For calendar or fiscal years ending in 1980 to 1986, inclusive, the rate of tax shall be 9.6 percent.

(d) For calendar or fiscal years ending in 1987 to 1996, inclusive, and for any income year beginning before January 1, 1997, the tax rate shall be 9.3 percent.

(e) For any income year beginning on or after January 1, 1997, the tax rate shall be 8.84 percent. The change in rate provided in this subdivision shall be made without proration otherwise required by Section 24251.

SEC. 53. Section 23151.1 of the Revenue and Taxation Code is amended to read:

23151.1. Notwithstanding Section 23151, every corporation (except banks and financial corporations) doing business within the limits of this state and not exempted from taxation by the provisions of the Constitution of this state or by this part, shall annually pay to the state for the privilege of exercising its corporate franchises within this state, a tax determined as follows:

(a) With respect to corporations, other than those described in subdivision (b), which commence doing business within the state after December 31, 1971, the tax for the taxable year of commencement, whether or not for 12 full months, shall be the minimum franchise tax prescribed in Section 23153.

(b) If after December 31, 1972, a corporation commences to do business and ceases doing business in the same taxable year, the tax for that taxable year shall be according to or measured by its net income for the year, to be computed at the rate prescribed in Section 23151.

(c) With respect to taxable years beginning after December 31, 1972, other than the year of commencement described in subdivision (a) or (b) or the year of cessation described in subdivision (d), the tax for that taxable year shall be according to or measured by its net income for the next preceding income year, to be computed at the rate prescribed in Section 23151.

(d) With respect to corporations which cease doing business in a taxable year beginning after December 31, 1972, other than those described in subdivision (b), the tax for the taxable year of cessation shall be:

(1) According to or measured by its net income for the next preceding income year, to be computed at the rate prescribed in Section 23151, plus

(2) According to or measured by its net income for the income year during which the corporation ceased doing business, to be computed at the rate prescribed in Section 23151.

(e) In any event, the tax for any taxable year shall not be less than the minimum tax provided for in Section 23153 for that taxable year.

SEC. 54. Section 23151.2 of the Revenue and Taxation Code is amended to read:

23151.2. Notwithstanding Section 23151, every corporation (except banks and financial corporations) not exempted from taxation by the provisions of the Constitution of this state or by this part which dissolves or withdraws, shall pay a tax for its taxable year of dissolution or withdrawal according to or measured by its net income for the income year in which it ceased doing business, unless

that income has previously been included in the measure of tax for any taxable year, to be computed at the rate prescribed in Section 23151 for its taxable year of dissolution or withdrawal. In any event, the tax for the taxable year of its dissolution or withdrawal shall not be less than the minimum tax provided for in Section 23153 for that taxable year.

SEC. 55. Section 23153 of the Revenue and Taxation Code is amended to read:

23153. (a) Every corporation described in subdivision (b) shall be subject to the minimum franchise tax specified in subdivision (d) from the earlier of the date of incorporation, qualification, or commencing to do business within this state, until the effective date of dissolution or withdrawal as provided in Section 23331 or, if later, the date the corporation ceases to do business within the limits of this state.

(b) Unless expressly exempted by this part or the California Constitution, subdivision (a) shall apply to each of the following:

(1) Every corporation that is incorporated under the laws of this state.

(2) Every corporation that is qualified to transact intrastate business in this state pursuant to Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code.

(3) Every corporation that is doing business in this state.

(c) The following entities are not subject to the minimum franchise tax specified in this section:

(1) Credit unions.

(2) Nonprofit cooperative associations organized pursuant to Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code that have been issued the certificate of the board of supervisors prepared pursuant to Section 54042 of the Food and Agricultural Code. The association shall be exempt from the minimum franchise tax for five consecutive income years, commencing with the first income year for which the certificate is issued pursuant to subdivision (b) of Section 54042 of the Food and Agricultural Code. This paragraph only applies to nonprofit cooperative associations organized on or after January 1, 1994.

(d) (1) Except as provided in paragraph (2), corporations subject to the minimum franchise tax shall pay annually to the state a minimum franchise tax of eight hundred dollars ($800).

(2) The minimum franchise tax shall be twenty-five dollars ($25) for each of the following:

(A) A corporation formed under the laws of this state whose principal business when formed was gold mining, which is inactive and has not done business within the limits of the state since 1950.

(B) A corporation formed under the laws of this state whose principal business when formed was quicksilver mining, which is inactive and has not done business within the limits of the state since

1971, or has been inactive for a period of 24 consecutive months or more.

(3) For purposes of paragraph (2), a corporation shall not be considered to have done business if it engages in other than mining.

(e) Notwithstanding subdivision (a), a domestic corporation, as defined in Section 167 of the Corporations Code, that files a certificate of dissolution in the office of the Secretary of State pursuant to subdivision (c) of Section 1905 of the Corporations Code and that does not thereafter do business shall not be subject to the minimum franchise tax for income years beginning on or after the date of that filing.

(f) The minimum franchise tax imposed by paragraph (1) of subdivision (d) shall not be increased by the Legislature by more than 10 percent during any calendar year.

SEC. 56. Section 23183.1 of the Revenue and Taxation Code is amended to read:

23183.1. Notwithstanding Section 23183, every financial corporation doing business within the limits of this state and not exempted from taxation by the Constitution of this state or by this part, shall annually pay to the state for the privilege of exercising its corporate franchises within this state, a tax determined as follows:

(a) If a financial corporation commences to do business and ceases doing business in the same taxable year, the tax for that taxable year shall be according to or measured by its net income for that year, at the rate provided under Section 23186.

(b) With respect to taxable years other than the year of commencement described in subdivision (a) or the year of cessation described in subdivision (c), a tax according to or measured by its net income, to be computed at the rate prescribed in Section 23186 upon the basis of its net income for the next preceding income year.

(c) With respect to financial corporations, which cease doing business in a taxable year other than those described in subdivision (a), the tax for the taxable year of cessation shall be:

(1) According to or measured by its net income for the next preceding income year to be computed at the rate prescribed in Section 23186, plus

(2) According to or measured by its net income for the income year during which the financial corporation ceased doing business, to be computed at the rate prescribed in Section 23186.

SEC. 57. Section 23183.2 of the Revenue and Taxation Code is amended to read:

23183.2. Notwithstanding Section 23183, every financial corporation not exempted from taxation by the provisions of the Constitution of this state or by this part which dissolves or withdraws, shall pay a tax for its taxable year of dissolution or withdrawal according to or measured by its net income for the income year in which it ceased doing business, to be computed at the rate prescribed in Section 23186 for its taxable year of dissolution or withdrawal,

unless the income has previously been included in the measure of tax for any taxable year.

SEC. 58. Section 23184 of the Revenue and Taxation Code is repealed.

SEC. 59. Section 23184.5 of the Revenue and Taxation Code is repealed.

SEC. 60. Section 23185 of the Revenue and Taxation Code is repealed.

SEC. 61. Section 23185a of the Revenue and Taxation Code is repealed.

SEC. 62. Section 23185b of the Revenue and Taxation Code is repealed.

SEC. 63. Section 23186 of the Revenue and Taxation Code is amended to read:

23186. For income years ending on or after December 31, 1995, the rate of tax on banks and financial corporations shall be the rate of tax specified in Section 23151, plus 2 percent.

SEC. 64. Section 23186.1 of the Revenue and Taxation Code is repealed.

SEC. 65. Section 23186.2 of the Revenue and Taxation Code is repealed.

SEC. 66. Section 23186.5 of the Revenue and Taxation Code is repealed.

SEC. 67. Section 23303 of the Revenue and Taxation Code is amended to read:

23303. Notwithstanding the provisions of Section 23301 or 23301.5, any corporation that transacts business or receives income within the period of its suspension or forfeiture shall be subject to tax under the provisions of this chapter.

SEC. 68. Section 23305.2 of the Revenue and Taxation Code is amended to read:

23305.2. Notwithstanding Sections 23305 and 23305.1 that require a taxpayer to pay any liability to the Franchise Tax Board as a condition to revivor or relief from voidability, the Franchise Tax Board shall issue a certificate of revivor under Section 23305, or of relief from voidability under Section 23305.1, if the taxpayer provides the Franchise Tax Board with an assumption of liability, or a bond, deposit, or other security for taxpayer's liability, that is acceptable to the Franchise Tax Board. The Franchise Tax Board shall notify the person filing the application for revivor or relief from voidability of the amount of the bond, deposit, or other security, or of the terms of an assumption of liability, that must be furnished as a condition of the revivor or the relief from voidability. Obtaining revivor or voidability relief by securing the debt pursuant to this section shall not constitute an admission of liability by the taxpayer, nor relieve the taxpayer or any individual or corporation from liability for any taxes, additions to tax, penalties, or interest imposed by this part. A taxpayer that provides an assumption of liability or a bond, deposit, or other

security to obtain revivor or relief from voidability may, notwithstanding Section 23305 or 23305.1, file any returns required under those sections within a reasonable time after relief is granted by the Franchise Tax Board.

SEC. 69. Section 23332 of the Revenue and Taxation Code is amended to read:

23332. (a) Except in the case of a taxpayer subject to the provisions of Section 23222a, any taxpayer which is dissolved or withdraws from the state during any taxable year shall pay a tax only for the months of the taxable year which precede the effective date of the dissolution or withdrawal, according to or measured by (1) the net income of the preceding income year or (2) a percentage of net income determined by ascertaining the ratio which the months of the taxable year, preceding the effective date of dissolution or withdrawal, bears to the months of the income year, whichever is the lesser amount. The taxes levied under this chapter shall not be subject to abatement or refund because of the cessation of business or corporate existence of any taxpayer pursuant to a reorganization, consolidation, or merger (as defined by Section 23251). In any event, each corporation shall pay a tax not subject to offset for the period in an amount equal to the minimum tax prescribed by Section 23153.

(b) The provisions of subdivision (a) shall be applied only with respect to taxpayers which dissolve or withdraw before January 1, 1973. On and after that date, the tax for the taxable year in which the taxpayer ceases doing business, dissolves or withdraws shall be determined under the appropriate provisions of Section 23151.1, 23153, 23181, or 23183, whichever is applicable. However, if all of the following conditions are satisfied, a minimum franchise tax shall not be imposed with respect to the taxable year in which a tax clearance certificate is issued by the Franchise Tax Board:

(1) The taxpayer does not do business in this state at any time during that taxable year.

(2) The taxpayer files a certificate of dissolution with the Secretary of State prior to the beginning of that taxable year, in accordance with Section 1905 of the Corporations Code.

SEC. 70. Section 23332.5 of the Revenue and Taxation Code is amended to read:

23332.5. If a financial corporation ceases doing business, dissolves, or withdraws from the state during any taxable year, the tax for the taxable year during which cessation of doing business, dissolution or withdrawal occurs shall be computed as prescribed by subdivision (b) or (d) of Section 23183, 23183.1, or 23183.2.

SEC. 71. Section 23334 of the Revenue and Taxation Code is amended to read:

23334. No decree of dissolution shall be made and entered by any court, nor shall the county clerk of any county or the Secretary of State file a decree of dissolution, or file in the case of a credit union incorporated under the California Credit Union Law a certificate of

election to dissolve, or in the case of any other taxpayer file a certificate of dissolution, except as provided in subdivision (c) of Section 1905 of the Corporations Code, or any other document by which the term of existence of the taxpayer shall be reduced or terminated, nor shall the Secretary of State file any certificate of the surrender by a foreign corporation of its right to do intrastate business in this state unless the taxpayer obtains from the Franchise Tax Board and files with the court, county clerk, or Secretary of State as the case may be, a tax clearance certificate indicating that the Franchise Tax Board is satisfied from the available evidence that all taxes imposed by this chapter have been paid or are secured by bond, deposit, or otherwise. Within 30 days after receiving a request for a certificate, the Franchise Tax Board shall either issue the certificate or notify the person requesting the certificate of the amount of tax that must be paid or the amount of bond, deposit, or other security that must be furnished as a condition of issuing the certificate. The issuance of the certificate shall not relieve the taxpayer or any individual or corporation from liability for any taxes, penalties, or interest imposed by this part, nor shall the issuance of the certificate in the case of any credit union which revokes its election to wind up and dissolve, relieve that credit union of any taxes or interest that would have been imposed under this part had the election not been filed.

The Franchise Tax Board shall furnish a copy of the tax clearance certificate to the Secretary of State.

SEC. 72. Section 23455 of the Revenue and Taxation Code is amended to read:

23455. For purposes of this part, Section 55 of the Internal Revenue Code is modified as follows:

(a) Section 55(b)(1) of the Internal Revenue Code, relating to tentative minimum tax, is modified by requiring the tentative minimum tax for the taxable year to be imposed as follows:

(1) With respect to corporations subject to tax under Chapter 2 (commencing with Section 23101), other than banks or financial corporations, according to or measured by net income, for the privilege of doing business within this state, at a rate of 7 percent upon the basis of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount.

(2) With respect to corporations subject to tax under Chapter 3 (commencing with Section 23501), on net income from sources within this state, at a rate of 7 percent upon the basis of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount.

(3) With respect to organizations or trusts subject to tax under Article 2 (commencing with Section 23731) of Chapter 4, on the unrelated business income from sources within this state, at a rate of 7 percent upon the basis of so much of the alternative taxable income for the taxable year as exceeds the exemption amount.

(4) With respect to banks subject to tax under Section 23181, according to or measured by net income, for the privilege of doing business within this state, in an amount equal to the sum of the following:

(A) At a rate of 7 percent upon the basis of so much of the alternative minimum taxable income as exceeds the exemption amount.

(B) At the rate determined under Section 23186, less the rate prescribed by Section 23151, upon the basis of net income for the taxable year.

(5) With respect to financial corporations subject to tax under Section 23183, according to or measured by net income, for the privilege of doing business within this state, in an amount equal to the sum of the following:

(A) At a rate of 7 percent upon the basis of so much of the alternative minimum taxable income as exceeds the exemption amount.

(B) At the rate determined under Section 23186, less the rate prescribed by Section 23151, upon the basis of net income for the taxable year.

(b) Section 55(b)(2) of the Internal Revenue Code, relating to the definition of alternative minimum taxable income, is modified as follows:

(1) For corporations whose net income is determined under Chapter 17 (commencing with Section 25101), alternative minimum taxable income shall be allocated and apportioned in the same manner as net income is allocated and apportioned for purposes of the regular tax.

(2) With respect to taxpayers subject to Article 4 (commencing with Section 23221) of Chapter 2, Article 4 (commencing with Section 23221) to Article 9 (commencing with Section 23361), inclusive, shall apply to the tax imposed by this section except that Section 23221 shall not apply.

(3) For purposes of computing the alternative minimum tax for taxable years in which a taxpayer commenced doing business, dissolves, withdraws, or ceases doing business, Sections 18601, 23151, 23151.1, 23151.2, 23181, 23183, 23183.1, 23183.2, 23201 to 23204, inclusive, 23222 to 23224.5, inclusive, 23282, 23332.5, and 23504 shall be applied with due regard for the rate and alternative minimum taxable income prescribed by this chapter.

(c) Section 55(c) of the Internal Revenue Code, relating to the definition of regular tax, is modified to read:

(1) For purposes of this chapter, "regular tax" means the amount of tax imposed under Chapter 2 (commencing with Section 23101) or Chapter 3 (commencing with Section 23501) or Article 2 (commencing with Section 23731) of Chapter 4, but does not include any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.

(2) The tax specified in paragraph (1) shall be the amount determined prior to reduction by any credits against the tax.

(d) The rate of 7 percent prescribed in subdivision (a) shall be 6.65 percent for any income year beginning on or after January 1, 1997. The change in rate provided in this subdivision shall be made without proration otherwise required by Section 24251.

SEC. 73. Section 23501 of the Revenue and Taxation Code is amended to read:

23501. (a) There shall be imposed upon every corporation, other than a bank, for each taxable year, a tax at the rate of 7.6 percent upon its net income derived from sources within this state on or after January 1, 1937, other than income for any period for which the corporation is subject to taxation under Chapter 2 (commencing with Section 23101), according to or measured by its net income.

(b) For calendar or fiscal years ending after June 30, 1973, the rate of tax shall be 9 percent instead of 7.6 percent as provided by subdivision (a).

(c) For calendar or fiscal years ending after December 31, 1979, the rate of tax shall be the rate specified for those years by Section 23151.

SEC. 74. Section 23610.5 of the Revenue and Taxation Code is amended to read:

23610.5. (a) (1) There shall be allowed as a credit against the "tax" (as defined by Section 23036) a state low-income housing tax credit in an amount equal to the amount determined in subdivision (c), computed in accordance with Section 42 of the Internal Revenue Code of 1986, except as otherwise provided in this section.

(2) "Taxpayer," for purposes of this section, means the sole owner in the case of a C corporation, the partners in the case of a partnership, and the shareholders in the case of an S corporation.

(3) "Housing sponsor," for purposes of this section, means the sole owner in the case of a C corporation, the partnership in the case of a partnership, and the S corporation in the case of an S corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the California Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility in accordance with the requirements of this section.

(A) The low-income housing project shall be located in California and shall meet either of the following requirements:

(i) The project's housing sponsor shall have been allocated by the California Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(ii) It shall qualify for a credit under Section 42(h)(4)(B) of the Internal Revenue Code.

(B) The California Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to Section 42 of

the Internal Revenue Code. The committee may require a fee if the application for the credit under this section is submitted in a calendar year after the year the application is submitted for the federal tax credit.

(2) (A) The California Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.

(B) In the case of a partnership or an S corporation, the housing sponsor shall provide a copy of the California Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall, upon request, provide a copy of the certification to the Franchise Tax Board.

(D) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(E) For buildings located in designated difficult development areas or qualified census tracts as defined in Section 42(d)(5)(C) of the Internal Revenue Code, credits may be allocated under this section in the amounts prescribed in subdivision (c), provided that the amount of credit allocated under Section 42 of the Internal Revenue Code is computed on 100 percent of the qualified basis of the building.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building placed in service by the housing sponsor during 1987, the term "applicable percentage" means 9 percent for each of the first three years and 3 percent for the fourth year for new buildings (whether or not the building is federally subsidized) and for existing buildings.

(2) In the case of any qualified low-income building that receives an allocation after 1989 and is a new building not federally subsidized, the term "applicable percentage" means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b)(1)(A).

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(3) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building that is federally subsidized or that is an existing building that is "at risk of conversion," the term "applicable percentage" means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are federally subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(4) For purposes of this section, the term "at risk of conversion," with respect to an existing building means a building that satisfies all of the following criteria:

(A) The building is presently owned by a housing sponsor other than a qualified nonprofit organization.

(B) The building is a federally assisted building for which the low-income use restrictions will terminate or the building is eligible for prepayment under Subtitle 13 of the Emergency Low Income Housing Assistance Act of 1987 or under Section 502(c) of the Housing Act of 1949, anytime in the two calendar years after the year of application to the California Tax Credit Allocation Committee, and the purchaser has received preliminary approval from the applicable federal agency for a maximum level of incentives through a plan of action.

(C) The person acquiring the building enters into a regulatory agreement that requires the building to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the building.

(D) The building satisfies the requirements of Section 42(e) of the Internal Revenue Code regarding rehabilitation expenditures, except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not apply.

(d) The term "qualified low-income housing project" as defined in Section 42(c)(2) of the Internal Revenue Code is modified by adding the following requirements:

(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, which, at the election of the taxpayer, is equal to:

(A) An amount not to exceed 8 percent of the lesser of:

(i) The owner equity that shall include the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note; or

(ii) Twenty percent of the adjusted basis of the building as of the close of the first income year of the credit period; or

(B) The amount of the cash-flow from those units in the building that are not low-income units. For purposes of computing cash-flow under this subparagraph, operating costs shall be allocated to the low-income units using the "floor space fraction," as defined in Section 42 of the Internal Revenue Code.

(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may accumulate and be distributed any time during the first 15 years of the compliance period but not thereafter.

(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an S corporation.

(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under

paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term "credit period" as defined in Section 42(f)(1) of the Internal Revenue Code is modified by substituting "four income years" for "10 taxable years."

(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code shall not apply to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of any income year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the later of the income years in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

The total amount for the four-year credit period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the California Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I), (7), and (8) of Section 42(h) of the Internal Revenue Code shall not be applicable.

(g) The aggregate housing credit dollar amount which may be allocated annually by the California Tax Credit Allocation Committee pursuant to this section, Section 12206, and Section 17058 shall be an amount equal to the sum of the following:

(1) Thirty-five million dollars ($35,000,000).

(2) The unused housing credit ceiling, if any, for the preceding calendar years; and

(3) The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the California Tax Credit Allocation Committee and the allocation recipient.

(h) The term "compliance period" as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30-consecutive income years beginning with the first income year of the credit period with respect thereto.

(i) Section 42(j) of the Internal Revenue Code shall not be applicable and the following shall be substituted in its place:

(1) The requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, and this agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code, shall apply, providing the agreement includes all of the following provisions:

(A) A term not less than the compliance period.

(B) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

(C) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

(D) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto, and which allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to the building, the right to enforce the regulatory agreement in any state court.

(E) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(F) A requirement that the housing sponsor notify the California Tax Credit Allocation Committee or its designee if there is a determination by the Internal Revenue Service that the project is not in compliance with Section 42(g) of the Internal Revenue Code.

(G) A requirement that the housing sponsor, as security for the performance of the housing sponsor's obligations under the regulatory agreement, assign the housing sponsor's interest in rents that it receives from the project, provided that until there is a default under the regulatory agreement, the housing sponsor is entitled to collect and retain the rents.

(H) The remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period, include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the housing sponsor is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance; securing the

appointment of a receiver to operate the project; or any other relief as may be appropriate.

(j) (1) The committee shall allocate the housing credit on a regular basis consisting of two or more periods in each calendar year during which applications may be filed and considered. The committee shall establish application filing deadlines, the maximum percentage of federal and state low-income housing tax credit ceiling that may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law, the adoption of rules or regulations, or other similar events prevent the use of two allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and the allocation dates.

(2) The committee shall adopt a qualified allocation plan, as provided in Section 42(m)(1) of the Internal Revenue Code. In adopting this plan, the committee shall comply with the provisions of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code.

(3) Notwithstanding Section 42(m) of the Internal Revenue Code, the California Tax Credit Allocation Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:

(A) All housing sponsors, as defined by paragraph (3) of subdivision (a), shall demonstrate at the time the application is filed with the committee that the project meets the following threshold requirements:

(i) The housing sponsor shall demonstrate there is a need for low-income housing in the community or region for which it is proposed.

(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and shall be adequate to operate the project for the extended use period.

(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(iv) The housing sponsor shall have and maintain control of the site for the project.

(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.

(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a

supportable debt service, reserves, funds set aside for rental subsidies, and required equity, and a development fee that does not exceed a specified percentage of the eligible basis of the project prior to inclusion of the development fee in the eligible basis, as determined by the committee.

(B) The committee shall give a preference to those projects satisfying all of the threshold requirements of subparagraph (A) if:

(i) The project serves the lowest income tenants at rents affordable to those tenants; and

(ii) The project is obligated to serve qualified tenants for the longest period.

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which a substantial number, as defined by the committee of all residential units is comprised of low-income units with three and more bedrooms.

(ii) Projects providing single room occupancy units serving very low income tenants.

(iii) Existing projects that are "at risk of conversion," as defined by paragraph (4) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner's equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application except to break a tie when two or more of the projects have an equal rating.

(5) Not less than 20 percent of the low-income housing tax credits available annually under this section, Section 12206, and Section 17058 shall be set aside for allocation to rural areas as defined in Section 50199.21 of the Health and Safety Code. Any amount of credit set aside for rural areas remaining on or after October 31 of any calendar year shall be available for allocation to any eligible project. No amount of credit set aside for rural areas shall be considered available for any eligible project so long as there are eligible rural applications pending on October 31.

(k) Section 42(*l*) of the Internal Revenue Code shall be modified as follows:

The term "secretary" shall be replaced by the term "California Franchise Tax Board."

(*l*) In the case where the state credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(m) A project that received an allocation of a 1989 federal housing credit dollar amount shall be eligible to receive an allocation of a 1990 state housing credit dollar amount, subject to all of the following conditions:

(1) The project was not placed in service prior to 1990.

(2) To the extent the amendments made to this section by the Statutes of 1990 conflict with any provisions existing in this section prior to those amendments, the prior provisions of law shall prevail.

(3) Notwithstanding paragraph (2), a project applying for an allocation under this subdivision shall be subject to the requirements of paragraph (3) of subdivision (j).

(n) The credit period with respect to an allocation of credit in 1989 by the California Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.

(o) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income housing credit, shall apply to calendar years after 1989.

(p) The provisions of Section 11407(c) of Public Law 101-508, relating to election to accelerate credit, shall not apply.

(q) (1) A corporation may elect to assign any portion of any credit allowed under this section to one or more affiliated corporations for each income year in which the credit is allowed. For purposes of this subdivision, "affiliated corporation" has the meaning provided in subdivision (b) of Section 25110, as that section was amended by Chapter 881 of the Statutes of 1993, as of the last day of the income year in which the credit is allowed, except that "100 percent" is substituted for "more than 50 percent" wherever it appears in the section, as that section was amended by Chapter 881 of the Statutes of 1993, and "voting common stock" is substituted for "voting stock" wherever it appears in the section, as that section was amended by Chapter 881 of the Statutes of 1993.

(2) The election provided in paragraph (1):

(A) May be based on any method selected by the corporation that originally receives the credit.

(B) Shall be irrevocable for the income year the credit is allowed, once made.

(C) May be changed for any subsequent income year if the election to make the assignment is expressly shown on each of the returns of the affiliated corporations that assign and receive the credits.

(r) Any unused credit may continue to be carried forward, as provided in subdivision (k), until the credit has been exhausted.

This section shall remain in effect on or after December 1, 1990, for as long as Section 42 of the Internal Revenue Code, pertaining to low-income housing credits, remains in effect.

(s) The amendments to this section made by the act adding this subdivision shall apply only to income years beginning on or after

January 1, 1994, except that paragraph (1) of subdivision (q), as amended, shall apply to income years beginning on or after January 1, 1993.

SEC. 75. Section 23612.6 of the Revenue and Taxation Code is amended to read:

23612.6. (a) For each income year beginning on or after January 1, 1992, and before January 1, 1998, there shall be allowed a credit against the "tax," as defined by Section 23036, for the income year an amount equal to the sales or use tax paid or incurred during the income year by the taxpayer in connection with the taxpayer's purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means a corporation engaged in a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(2) "Qualified property" means the purchase on or after May 1, 1992, and before the zone expiration date, of either or both of the following:

(A) Building materials to replace or repair the taxpayer's building and fixtures.

(B) Machinery or equipment, excluding inventory, to be used by the taxpayer exclusively in the Los Angeles Revitalization Zone.

(3) "Zone expiration date" means the date the Los Angeles Revitalization Zone designation expires, is repealed, or becomes inoperative pursuant to Section 7102, 7103, or 7104 of the Government Code.

(c) If the taxpayer is allowed a credit for qualified property pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to that qualified property.

(d) In the case where the credit otherwise allowed under this section exceeds the tax for the income year, that portion of the credit that exceeds the tax may be carried over and added to the credit, if any, in succeeding income years for the number of income years in which the designation of the Los Angeles Revitalization Zone under Section 7102 of the Government Code is operative, or 15 income years, if longer, until the credit is exhausted. The credit shall be applied first to the earliest income year possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to the sales and use tax paid or incurred in connection with the taxpayer's purchase of qualified property.

(f) (1) The amount of credit otherwise allowed under this section and Sections 23623.5 and 23625, including any credit carryover from prior years, that may reduce the tax for the income year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the Los Angeles Revitalization Zone (designated pursuant to Section 7102 of the Government Code)

determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be that portion of the taxpayer's California source business income which is apportioned to the Los Angeles Revitalization Zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the Los Angeles Revitalization Zone in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17, modified as follows:

(A) Business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the income year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(C) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the income year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the income year.

(3) The portion of the credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the tax for the income year, as provided in subdivision (d).

(g) If the qualified property is disposed of or no longer used by the taxpayer in the Los Angeles Revitalization Zone, at any time before the close of the second income year after the property is placed in service, the amount of the credit previously claimed shall be added to the taxpayer's tax liability in the income year of that disposition or nonuse.

(h) This section shall be inoperative as of the first day of the income year beginning on or after the determination date, and each income year thereafter, with respect to the taxpayer's business activities within a geographic area that is excluded from the map pursuant to Section 7102 of the Government Code, or an excluded area determined pursuant to Section 7104 of the Government Code. The determination date is the earlier of the first effective date of a determination under subdivision (c) of Section 7102 of the Government Code occurring after December 1, 1994, or the first effective date of an exclusion of an area from the amended Los Angeles Revitalization Zone under Section 7104 of the Government Code. However, if the taxpayer has any unused credit amount as of

the date this section becomes inoperative, that unused credit amount may continue to be carried forward as provided in subdivision (d).

(i) This section shall remain in effect only until December 1, 1998, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (d).

SEC. 76. Section 23623.5 of the Revenue and Taxation Code is amended to read:

23623.5. (a) For each income year beginning on or after January 1, 1992, and before January 1, 1998, the taxpayer shall be allowed for hiring qualified disadvantaged individuals on or after May 1, 1992, a credit against the "tax," as defined in Section 23036, for the income year equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) That portion of wages paid or incurred by the taxpayer during the income year to qualified disadvantaged individuals that does not exceed 150 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the day the disadvantaged individual commences employment with the taxpayer.

(C) Qualified wages does not include any wages paid or incurred by the taxpayer on or after the zone expiration date.

(D) If, after a taxpayer hires a qualified disadvantaged individual, the geographic area in which the taxpayer's trade or business is located is excluded from the map of the Los Angeles Revitalization Zone by the Trade and Commerce Agency pursuant to Section 7102 or 7104 of the Government Code, wages paid or incurred with respect to the disadvantaged individual may continue to be qualified wages and may qualify for the credit under this section, provided all provisions of this section are satisfied, applied as if the taxpayer's trade or business was still located within the Los Angeles Revitalization Zone.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Qualified disadvantaged individual" means an individual who is a qualified employee and a resident of the Los Angeles Revitalization Zone.

(4) "Los Angeles Revitalization Zone" means the area designated under Section 7102 of the Government Code.

(5) "Qualified employee" means an individual that meets both of the following:

(A) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in the Los Angeles Revitalization Zone.

(B) Who performs at least 50 percent of his or her services for the taxpayer during the income year in the Los Angeles Revitalization Zone.

(6) "Resident" means a "resident" as defined in Section 7101 of the Government Code.

(7) "Taxpayer" means a corporation engaged in a trade or business within the Los Angeles Revitalization Zone.

(8) "Zone expiration date" means the date the Los Angeles Revitalization Zone designation expires, is repealed, or becomes inoperative pursuant to Section 7102, 7103, or 7104 of the Government Code.

(9) (A) All employees of all corporations that are members of the same controlled group of corporations shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section to each member shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit and allocated in that manner.

(C) "Controlled group of corporations" means "controlled group of corporations" as defined in Section 1563(a) of the Internal Revenue Code, except that:

(i) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(ii) The determination shall be made without regard to Sections 1563(a)(4) and 1563(e)(3)(C) of the Internal Revenue Code.

(10) If a taxpayer acquires the major portion of a trade or business of another employer (hereafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for the purposes of applying this section (other than subdivision (c)) for any calendar year ending after that acquisition, the employment relationship between a disadvantaged individual and an employer shall not be treated as terminated if the individual continues to be employed in that trade or business.

(c) (1) If the employment of any disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a), is terminated by the taxpayer at any time during the

first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that individual completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that individual.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a disadvantaged individual who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a disadvantaged individual who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of a disadvantaged individual, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of a disadvantaged individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a disadvantaged individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and a disadvantaged individual shall not be treated as terminated by either of the following:

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the individual continues to be employed by the acquiring corporation.

(ii) By reason of a mere change in the form of conducting the trade or business of the taxpayer, if the individual continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(d) In the case of an organization to which Section 593 of the Internal Revenue Code applies, and a regulated investment company or a real estate investment trust subject to taxation under this part, rules similar to the rules provided in Sections 46(e) and 46(h) of the Internal Revenue Code shall apply.

(e) The credit shall be reduced by the credits allowed under Sections 23621, 23622.7, 23623, and 23625, claimed for the same

disadvantaged individual. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (f) or (g).

(f) In the case where the credit otherwise allowed under this section exceeds tax for the income year, that portion of the credit that exceeds the tax may be carried over and added to the credit, if any, in succeeding income years while the designation of the Los Angeles Revitalization Zone under Section 7102 of the Government Code is operative or 15 income years, if longer, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(g) (1) The amount of credit otherwise allowed under this section and Sections 23612.6 and 23625, including any credit carryover from prior years, that may reduce the tax for the income year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributable to the Los Angeles Revitalization Zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be that portion of the taxpayer's California source business income which is apportioned to the Los Angeles Revitalization Zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the Los Angeles Revitalization Zone in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17, modified as follows:

(A) Business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the income year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(C) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the income year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the income year.

(3) The portion of the credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years,

as if it were an amount exceeding the tax for the income year, as provided in subdivision (f).

(h) Except as provided in subparagraph (D) of paragraph (1) of subdivision (b), this section shall be inoperative on the first day of the income year beginning on or after the determination date, and each income year thereafter, with respect to the taxpayer's business activities within a geographic area that is excluded from the map pursuant to Section 7102 of the Government Code, or an excluded area determined pursuant to Section 7104 of the Government Code. The determination date is the earlier of the first effective date of a determination under subdivision (c) of Section 7102 of the Government Code occurring after December 1, 1994, or the first effective date of an exclusion of an area from the amended Los Angeles Revitalization Zone under Section 7104 of the Government Code. However, if the taxpayer has any unused credit amount as of the date this section becomes inoperative, that unused credit amount may continue to be carried forward as provided in subdivision (f).

(i) This section shall remain in effect only until December 1, 1998, and as of that date is repealed. However, any unused credit may continue to be carried forward, as specified in subdivision (f).

SEC. 77. Section 23625 of the Revenue and Taxation Code is amended to read:

23625. (a) For each income year beginning on or after January 1, 1992, and before January 1, 1998, there shall be allowed to a taxpayer who employs qualified employees in the Los Angeles Revitalization Zone during the income year as a credit against the "tax," as defined in Section 23036, an amount equal to the sum of the following:

(1) One hundred percent of the qualified wages paid or incurred during the period from May 1, 1992, to the end of the sixth full month after the designation of the Los Angeles Revitalization Zone with respect to qualified employees that are hired during that period.

(2) Seventy-five percent of the qualified wages paid or incurred during the period from the beginning of the seventh month after designation to the end of the 12th full month after designation with respect to qualified employees that are hired during that period.

(3) Fifty percent of the qualified wages paid or incurred during the period from the beginning of the 13th month after designation to the end of the 60th full month after designation with respect to qualified employees that are hired during that period.

(b) For purposes of this section:

(1) (A) "Qualified wages" means that portion of wages paid or incurred by the taxpayer for construction work in the Los Angeles Revitalization Zone during the income year with respect to qualified employees which does not exceed 150 percent of the minimum wage.

(B) If, after a taxpayer hires a qualified employee, the geographic area in which the taxpayer's trade or business is located is excluded from the map of the Los Angeles Revitalization Zone by the Trade

and Commerce Agency pursuant to Section 7102 or 7104 of the Government Code, wages paid or incurred with respect to the qualified employee may continue to be qualified wages and may qualify for the credit under this section, provided all provisions of this section are satisfied, applied as if the taxpayer's trade or business was still located within the Los Angeles Revitalization Zone.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Qualified employee" means an individual to whom both of the following apply:

(A) Is a resident, as defined in Section 7101 of the Government Code, in the Los Angeles Revitalization Zone.

(B) Was hired by the taxpayer to perform construction work in the Los Angeles Revitalization Zone.

(4) "Los Angeles Revitalization Zone" means the area designated pursuant to Section 7102 of the Government Code.

(5) "Construction work" means any work performed by a qualified employee directly related to the erection, demolition, repair, or renovation of a structure located within the Los Angeles Revitalization Zone.

(6) "Taxpayer" means a corporation engaged in a trade or business within the Los Angeles Revitalization Zone.

(c) If an employer acquires the major portion of a trade or business of another employer (hereafter in this subdivision referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for the purposes of applying this section, other than subdivision (h), for any income year ending after the acquisition, the employment relationship between a qualified employee and employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(d) The credit shall be reduced by the credits allowable under Sections 23621, 23622, 23623, and 23623.5 claimed for the same qualified employee. The credit shall also be reduced by the credit allowed under Section 51 of the Internal Revenue Code for the same qualified employee.

(e) Any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of credit, prior to any reduction required by subdivision (f) or (g).

(f) In the case where the credit otherwise allowed under this section exceeds the tax for the income year, that portion of the credit that exceeds the tax may be carried over and added to the credit, if any, in succeeding income years for the number of income years in which the designation of the Los Angeles Revitalization Zone under Section 7102 of the Government Code is operative, or 15 income

years, if longer, until the credit is exhausted. The credit shall be applied first to the earliest income year possible.

(g) (1) The amount of credit otherwise allowed under this section and Sections 23612.6 and 23623.5, including any credit carryover from prior years, that may reduce the tax for the income year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributable to the Los Angeles Revitalization Zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be that portion of the taxpayer's California source business income which is apportioned to the Los Angeles Revitalization Zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the Los Angeles Revitalization Zone in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(A) Business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the income year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(C) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the income year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the income year.

(3) The portion of the credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the tax for the income year, as provided in subdivision (f).

(h) (1) If the employment of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all

prior income years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that qualified employee.

(iii) A termination of employment of a qualified employee, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that qualified employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that qualified employee is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(vi) A termination of employment due to a contractual agreement.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and a qualified employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the qualified employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(i) Except as provided in subparagraph (B) of paragraph (1) of subdivision (b), this section shall cease to be operative on the first day of the income year beginning on or after the determination date, and each income year thereafter, with respect to the taxpayer's business activities within a geographic area that is excluded from the map pursuant to Section 7102 of the Government Code, or an excluded area determined pursuant to Section 7104 of the Government Code. For purposes of this subdivision, "determination date" means the earlier of the first effective date of a determination under subdivision (c) of Section 7102 of the Government Code occurring after December 1, 1994, or the first effective date of an exclusion of an area from the amended Los Angeles Revitalization Zone under Section 7104 of the Government Code. However, if the taxpayer has any unused credit amount as of the date this section becomes inoperative, that unused credit amount may continue to be carried forward as provided in subdivision (f).

(j) This section shall remain in effect only until December 1, 1998, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (f).

SEC. 78. Section 23645 of the Revenue and Taxation Code is amended to read:

23645. (a) For each income year beginning on or after January 1, 1995, and before January 1, 2003, there shall be allowed as a credit against the "tax" (as defined by Section 23036) for the income year an amount equal to the sales or use tax paid or incurred by the taxpayer in connection with the purchase of qualified property to the extent that the qualified property does not exceed a value of twenty million dollars ($20,000,000).

(b) For purposes of this section:

(1) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(2) "Taxpayer" means a corporation that conducts a trade or business within a LAMBRA and, for the first two income years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA.

(A) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the income year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second income year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the income year prior to commencing business operations in the LAMBRA shall be zero. If the taxpayer has a net increase in jobs in the state, the credit shall be allowed only if one or more full-time employees is employed within the LAMBRA.

(B) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(i) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(ii) The total number of months worked in the LAMBRA for the taxpayer by employees that are salaried employees divided by 12.

(C) In the case of a taxpayer who first commences doing business in the LAMBRA during the income year, for purposes of clauses (i) and (ii), respectively, of subparagraph (B) the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the income year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(3) "Qualified property" means the purchase of any of the following for exclusive use in a LAMBRA:

(A) High technology equipment, including, but not limited to, computers and electronic processing equipment.

(B) Aircraft maintenance equipment, including, but not limited to, engine stands, hydraulic mules, power carts, test equipment, handtools, aircraft start carts, and tugs.

(C) Aircraft components, including, but not limited to, engines, fuel control units, hydraulic pumps, avionics, starts, wheels, and tires.

(D) Any property that is Section 1245 property, as defined in Section 1245(a)(3) of the Internal Revenue Code.

(c) The credit provided under subdivision (a) shall only be allowed for qualified property manufactured in California unless qualified property of a comparable quality and price is not available for timely purchase and delivery from a California manufacturer.

(d) In the case where the credit otherwise allowed under this section exceeds the "tax" for the income year, that portion of the credit which exceeds the "tax" may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the purchase of qualified property.

(f) (1) The amount of the credit otherwise allowed under this section and Section 23646, including any credit carryovers from prior years, that may reduce the "tax" for the income year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributed to a LAMBRA determined as if that attributable income represented all the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section as follows:

(A) Income shall be apportioned to a LAMBRA by multiplying total business income by a fraction, the numerator of which is the property factor, plus the payroll factor, and the denominator of which is two.

(B) "The LAMBRA" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the "tax" for the income year, as provided in subdivision (d).

(g) (1) If the qualified property is disposed of or no longer used by the taxpayer in the LAMBRA, at any time before the close of the second taxable year after the property is placed in service, the amount of the credit previously claimed, with respect to that property, shall be added to the taxpayer's tax liability in the taxable year of that disposition or nonuse.

(2) At the close of the second income year, if the taxpayer has not increased the number of its employees as determined by paragraph (2) of subdivision (b), then the amount of the credit previously claimed shall be added to the taxpayer's tax for the taxpayer's second income year.

(h) If the taxpayer is allowed a credit for qualified property pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to that qualified property.

(i) This section shall remain in effect only until December 1, 2003, and as of that date is repealed. However, any unused credit may continue to be carried forward as provided in subdivision (d), until the credit is exhausted.

SEC. 79. Section 23646 of the Revenue and Taxation Code is amended to read:

23646. (a) For each income year beginning on or after January 1, 1995, and before January 1, 2003, there shall be allowed as a credit against the "tax" (as defined in Section 23036) to a qualified taxpayer for hiring a qualified disadvantaged individual or a qualified displaced employee during the income year for employment in the LAMBRA. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of the qualified wages in the first year of employment.

(2) Forty percent of the qualified wages in the second year of employment.

(3) Thirty percent of the qualified wages in the third year of employment.

(4) Twenty percent of the qualified wages in the fourth year of employment.

(5) Ten percent of the qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) That portion of wages paid or incurred by the employer during the income year to qualified disadvantaged individuals or qualified displaced employees that does not exceed 150 percent of the minimum wage.

(B) The total amount of qualified wages which may be taken into account for purposes of claiming the credit allowed under this section shall not exceed two million dollars ($2,000,000) per income year.

(C) Wages received during the 60-month period beginning with the day the individual commences employment with the taxpayer.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "LAMBRA" means a local agency military base recovery area designated in accordance with the provisions of Section 7114 of the Government Code.

(4) "Qualified disadvantaged individual" means an individual who satisfies all of the following requirements:

(A) (i) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in a LAMBRA.

(ii) Who performs at least 50 percent of his or her services for the taxpayer during the income year in the LAMBRA.

(B) Who is hired by the employer after the designation of the area as a LAMBRA in which the individual's services were primarily performed.

(C) Who is any of the following immediately preceding the individual's commencement of employment with the taxpayer:

(i) An individual who has been determined eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.).

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any individual who has been certified eligible by the Employment Development Department under the federal Targeted Jobs Tax Credit Program whether or not this program is in effect.

(5) "Qualified taxpayer" means a corporation that conducts a trade or business within a LAMBRA and, for the first two income years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees as determined below in the LAMBRA.

(A) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the income year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second income year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the income year prior to commencing business operations in the LAMBRA shall be zero. If the taxpayer has a net increase in jobs in the state, the credit shall be allowed only if one or more full-time employees is employed within the LAMBRA.

(B) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(i) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(ii) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(C) In the case of a qualified taxpayer that first commences doing business in the LAMBRA during the income year, for purposes of clauses (i) and (ii), respectively, of subparagraph (B) the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the income year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(6) "Qualified displaced employee" means an individual who satisfies all of the following requirements:

(A) Any civilian or military employee of a base or former base that has been displaced as a result of a federal base closure act.

(B) (i) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in a LAMBRA.

(ii) Who performs at least 50 percent of his or her services for the taxpayer during the income year in a LAMBRA.

(C) Who is hired by the employer after the designation of the area in which services were performed as a LAMBRA.

(c) (1) For purposes of this section, both of the following apply:

(A) All employees of all corporations that are members of the same controlled group of corporations shall be treated as employed by a single employer.

(B) The credit (if any) allowable by this section to each member shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit.

(2) For purposes of this subdivision, "controlled group of corporations" has the meaning given to that term by Section 1563(a) of the Internal Revenue Code, except that both of the following apply:

(A) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(B) The determination shall be made without regard to Section 1563(a)(4) and Section 1563(e)(3)(C) of the Internal Revenue Code.

(3) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (d)) for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(d) (1) If the employment of any employee with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of

that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable unemployment compensation laws that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by either of the following:

(i) A transaction to which Section 381(a) of the Internal Revenue Code applies, if the employee continues to be employed by the acquiring corporation.

(ii) A mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(4) At the close of the second income year, if the taxpayer has not increased the number of its employees as determined by paragraph (5) of subdivision (b), then the amount of the credit previously claimed shall be added to the taxpayer's tax for the taxpayer's second income year.

(e) In the case of an organization to which Section 593 of the Internal Revenue Code applies, and a regulated investment company or a real estate investment trust subject to taxation under

this part, rules similar to the rules provided in Section 46(e) and Section 46(h) of the Internal Revenue Code shall apply.

(f) The credit shall be reduced by the credit allowed under Section 23621. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (g) or (h).

(g) In the case where the credit otherwise allowed under this section exceeds the "tax" for the income year, that portion of the credit that exceeds the "tax" may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(h) (1) The amount of credit otherwise allowed under this section and Section 23645, including any prior year carryovers, that may reduce the "tax" for the income year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributed to a LAMBRA determined as if that attributed income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributed income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section as follows:

(A) Income shall be apportioned to a LAMBRA by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) "The LAMBRA" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the "tax" for the income year, as provided in subdivision (g).

(i) If the taxpayer is allowed a credit pursuant to this section for qualified wages paid or incurred, only one credit shall be allowed to the taxpayer under this part with respect to any wage consisting in whole or in part of those qualified wages.

(j) This section shall remain in effect only until December 1, 2003, and as of that date is repealed. However, any unused credit may continue to be carried over as provided in subdivision (g), until the credit is exhausted.

SEC. 80. Section 23731 of the Revenue and Taxation Code is amended to read:

23731. Every organization or trust exempt under this chapter, except as provided in this article, is subject to the tax imposed upon its unrelated business taxable income as defined in Section 23732.

(a) Corporations (other than banks and financial corporations), associations, and business trusts are subject to the tax rates imposed under Section 23151 or Section 23501.

(b) Trusts will be subject to the tax rates imposed by subdivision (e) of Section 17041.

This section applies to income years beginning after December 31, 1970.

SEC. 81. Section 23802 of the Revenue and Taxation Code is amended to read:

23802. (a) Section 1363(a) of the Internal Revenue Code, relating to the taxability of an S corporation, shall not be applicable.

(b) Corporations qualifying under this chapter shall continue to be subject to the taxes imposed under Chapter 2 (commencing with Section 23101) and Chapter 3 (commencing with Section 23501), except as follows:

(1) The tax imposed under Section 23151 or 23501 shall be imposed at a rate of $1^1/_2$ percent rather than the rate specified in those sections.

(2) In the case of an "S corporation" which is also a financial corporation, the rate of tax specified in paragraph (1) shall be increased by the excess of the rate imposed under Section 23183 over the rate imposed under Section 23151.

(c) An "S corporation" shall be subject to the minimum franchise tax imposed under Section 23153.

(d) (1) For purposes of subdivision (b), an "S corporation" shall be allowed a deduction under Section 24416 or 24416.1 (relating to net operating loss deductions), but only with respect to losses incurred during periods in which the corporation had in effect a valid election to be treated as an "S corporation" for purposes of this part.

(2) Section 1371(b) of the Internal Revenue Code, relating to denial of carryovers between "C years" and "S years," shall apply for purposes of the tax imposed under subdivision (b), except as provided in paragraph (1).

(3) The provisions of this subdivision shall not affect the amount of any item of income or loss computed in accordance with the provisions of Section 1366 of the Internal Revenue Code, relating to pass-thru items to shareholders.

(4) For purposes of subdivision (b) of Section 17276, relating to limitations on loss carryovers, losses passed through to shareholders of an "S corporation," to the extent otherwise allowable without application of that subdivision, shall be fully included in the net operating loss of that shareholder and then that subdivision shall be applied to the entire net operating loss.

(e) For purposes of computing the taxes specified in subdivision (b), an "S corporation" shall be allowed a deduction from income for built-in gains and passive investment income for which a tax has been imposed under this part in accordance with the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain

built-in gains, or Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income.

(f) For purposes of computing taxes imposed under this part, as provided in subdivision (b)—

(1) An "S corporation" shall compute its deductions for amortization and depreciation in accordance with the provisions of Part 10 (commencing with Section 17001) of Division 2.

(2) The provisions of Section 465 of the Internal Revenue Code, relating to limitation of deductions to the amount at risk, shall be applied in the same manner as in the case of an individual.

(3) (A) The provisions of Section 469 of the Internal Revenue Code, relating to limitations on passive activity losses and credits, shall be applied in the same manner as in the case of an individual. For purposes of the tax imposed under Section 23151 or 23501, as modified by this section, material participation shall be determined in accordance with Section 469(h) of the Internal Revenue Code, relating to certain closely held "C corporations" and personal service corporations.

(B) For purposes of this paragraph, the "adjusted gross income" of the "S corporation" shall be equal to its "net income," as determined under Section 24341 with the modifications required by this subdivision, except that no deduction shall be allowed for contributions allowed by Section 24357.

(4) The exclusion provided under Section 18152.5 shall not be allowed to an "S corporation."

(g) The provisions of Section 1363(d) of the Internal Revenue Code, relating to recapture of LIFO benefits, shall be modified for purposes of this part to refer to Section 19102 in lieu of Section 6601 of the Internal Revenue Code.

SEC. 82. Section 23809 of the Revenue and Taxation Code is amended to read:

23809. There is hereby imposed a tax on built-in gains attributable to California sources, determined in accordance with the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, as modified by this section.

(a) (1) The rate of tax specified in Section 1374(b)(1) of the Internal Revenue Code shall be equal to the rate of tax imposed under Section 23151 in lieu of the rate of tax specified in Section 11(b) of the Internal Revenue Code.

(2) In the case of an "S corporation" which is also a financial corporation, the rate of tax specified in paragraph (1) shall be increased by the excess of the rate imposed under Section 23183 over the rate imposed under Section 23151.

(b) The provisions of Section 1374(b)(3) of the Internal Revenue Code, relating to credits, shall be modified to provide that the tax imposed under subdivision (a) shall not be reduced by any credits allowed under this part.

(c) The provisions of Section 1374(b)(4) of the Internal Revenue Code, relating to coordination with Section 1201(a), shall not be applicable.

(d) In the case of a corporation which is subject to the provisions of former Section 1374 of the Internal Revenue Code (prior to amendment by Public Law 99-514), the provisions of that section shall be modified to provide that:

(1) The tax specified in Section 1374(b)(1) of the Internal Revenue Code shall be equal to the rate of tax imposed under Section 23151 in lieu of the rate of tax specified in Section 11(b) of the Internal Revenue Code.

(2) In the case of an "S corporation" which is also a financial corporation, the rate of tax specified in paragraph (1) shall be increased by the excess of the rate imposed under Section 23183 over the rate imposed under Section 23151.

SEC. 83. Section 23811 of the Revenue and Taxation Code is amended to read:

23811. Except as otherwise provided in this section, there is hereby imposed a tax on passive investment income attributable to California sources, determined in accordance with the provisions of Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income, as modified by this section.

(a) The tax imposed under this section shall not be imposed on an "S corporation" that has no excess net passive income for federal purposes determined in accordance with Section 1375 of the Internal Revenue Code.

(b) (1) The rate of tax shall be equal to the rate of tax imposed under Section 23151 in lieu of Section 11(b) of the Internal Revenue Code.

(2) In the case of an "S corporation" which is also a financial corporation, the rate of tax specified in paragraph (1) shall be increased by the excess of the rate imposed under Section 23183 over the rate imposed under Section 23151.

(c) The provisions of Section 1375(c)(1) of the Internal Revenue Code, relating to credits, shall be modified to provide that the tax imposed under subdivision (a) shall not be reduced by any credits allowed under this part.

(d) The term "subchapter C earnings and profits" as used in Sections 1362(d)(3) and 1375 of the Internal Revenue Code shall mean the subchapter C earnings and profits of the corporation attributable to California sources determined under this part, modified as provided in subdivision (e).

(e) (1) In the case of a corporation which elects to be treated as an "S corporation" for purposes of this part for its first income year beginning in 1987, or for its first income year for which it has in effect a valid federal S election, there shall be allowed as a deduction in determining that corporation's subchapter C earnings and profits at

the close of any income year the amount of any consent dividend (as provided in paragraph (2)) paid after the close of that income year.

(2) In the event there is a determination that a corporation described in paragraph (1) has subchapter C earnings and profits at the close of any income year, that corporation shall be entitled to distribute a consent dividend to its shareholders. The amount of the consent dividend shall not exceed the difference between the corporation's subchapter C earnings and profits determined under subdivision (d) at the close of the income year with respect to which the determination is made and the corporation's subchapter C earnings and profits for federal income tax purposes at the same date. A consent dividend must be paid within 90 days of the date of the determination that the corporation has subchapter C earnings and profits. For this purpose, the date of a determination means the effective date of a closing agreement pursuant to Section 19441, the date an assessment of tax imposed by this section becomes final, or the date of execution by the corporation of an agreement with the Franchise Tax Board relating to liability for the tax imposed by this section. For purposes of Part 10 and this part, a corporation must make the election provided in Section 1368(e)(3) of the Internal Revenue Code for any consent dividend.

(3) If a corporation distributes a consent dividend, it shall claim the deduction provided in paragraph (1) by filing a claim therefor with the Franchise Tax Board within 120 days of the date of the determination specified in paragraph (2).

(4) The collection of tax imposed by this section from a corporation described in paragraph (2) shall be stayed for 120 days after the date of the determination specified in paragraph (2). If a claim is filed pursuant to paragraph (3), collection of that tax shall be further stayed until the date the claim is acted upon by the Franchise Tax Board.

(5) If a claim is filed pursuant to paragraph (3), the running of the statute of limitations on the making of assessments and actions for collection of the tax imposed by this section shall be suspended for a period of two years after the date of the determination specified in paragraph (2).

SEC. 84. Section 24346 of the Revenue and Taxation Code is amended to read:

24346. (a) For purposes of subdivision (a) of Section 24345, if real property is sold during any real property tax year, then—

(1) So much of the real property tax as is properly allocable to that part of the year which ends on the day before the date of the sale shall be treated as a tax imposed on the seller; and

(2) So much of that tax as is properly allocable to that part of the year which begins on the date of the sale shall be treated as a tax imposed on the purchaser.

(b) (1) In the case of any sale of real property; if—

(A) A corporation may not, by reason of its method of accounting, deduct any amount for taxes unless paid; and

(B) The other party to the sale is (under the law imposing the real property tax) liable for the real property tax for the real property tax year;

then for purposes of subdivision (a) of Section 24345 the corporation shall be treated as having paid, on the date of the sale, so much of the tax as, under subdivision (a), is treated as imposed on the corporation. For purposes of the preceding sentence, if neither party is liable for the tax, then the party holding the property at the time the tax becomes a lien on the property shall be considered liable for the real property tax for the real property tax year.

(2) Subdivision (a) shall apply to income years beginning after December 31, 1960, but only in the case of sales after December 31, 1960.

(3) Subdivision (a) shall not apply to any real property tax, to the extent that the tax was allowable as a deduction under the Bank and Corporation Tax Law of 1954 to the seller for an income year which began before January 1, 1961.

(4) In the case of any sale of real property, if the corporation's net income for the income year during which the sale occurs is computed under an accrual method of accounting, and if no election under subdivision (b) of Section 24681 (relating to the accrual of real property taxes) applies, then, for purposes of subdivision (a) of Section 24345, that portion of the tax that—

(A) Is treated, under subdivision (a), as imposed on the corporation; and

(B) May not, by reason of the corporation's method of accounting, be deducted by the corporation for any income year, shall be treated as having accrued on the date of the sale.

SEC. 85. Section 24356.4 of the Revenue and Taxation Code is amended to read:

24356.4. (a) A taxpayer may elect to treat the cost of any Section 24356.4 property as an expense that is not chargeable to the capital account. Any cost so treated shall be allowed as a deduction for the income year in which the taxpayer places the Section 24356.4 property in service.

(b) (1) An election made under this section for any income year shall meet both of the following requirements:

(A) Specify the items of Section 24356.4 property to which the election applies and the cost of each of those items that is to be taken into account under subdivision (a).

(B) Be made on the taxpayer's original return of the tax imposed by this part for the income year.

(2) Any election made under this section, and any specifications contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(c) For purposes of this section:

(1) "Taxpayer" means a corporation engaged in a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(2) "Section 24356.4 property" means any recovery property that is all of the following:

(A) Section 1245 property (as defined in Section 1245(a)(3) of the Internal Revenue Code).

(B) Purchased and placed in service by the taxpayer on or after September 1, 1992, and before the zone expiration date.

(C) Used exclusively in a trade or business conducted within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(3) "Purchase" means any acquisition of property, but only if all of the following apply:

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under Section 267 or 707(b) of the Internal Revenue Code (but, in applying Sections 267(b) and 267(c) of the Internal Revenue Code, Section 267(c)(4) of the Internal Revenue Code shall be treated as providing that the family of an individual shall include only his or her spouse, ancestors, and lineal descendants).

(B) The property is not acquired by one member of an affiliated group from another member of the same affiliated group.

(C) The basis of the property in the hands of the person acquiring it is not determined in whole or in part by reference to the adjusted basis of the property in the hands of the person from whom acquired.

(4) "Zone expiration date" means the date the Los Angeles Revitalization Zone designation expires, is repealed, or becomes inoperative pursuant to Section 7102, 7103, or 7104 of the Government Code.

(d) This section does not apply to any property described in Section 168(f) of the Internal Revenue Code, relating to property to which Section 168 of the Internal Revenue Code does not apply.

(e) This section applies only to Section 24356.4 property that is used by the taxpayer exclusively in a trade or business conducted in the Los Angeles Revitalization Zone.

(f) Any amount deducted under subdivision (a) with respect to Section 24356.4 property that ceases to be used in the taxpayer's trade or business within the Los Angeles Revitalization Zone at any time before the close of the second income year after the property was placed in service shall be included in income in the income year in which property ceases to be so used.

(g) This section shall be inoperative on the first day of the income year beginning on or after the determination date, and each income year thereafter, with respect to the taxpayer's business activities within a geographic area that is excluded from the map pursuant to Section 7102 of the Government Code, or an excluded area

determined pursuant to Section 7104 of the Government Code. The determination date is the earlier of the first effective date of a determination under subdivision (c) of Section 7102 of the Government Code occurring after December 1, 1994, or the first effective date of an exclusion of an area from the amended Los Angeles Revitalization Zone under Section 7104 of the Government Code.

(h) This section shall remain in effect only until December 1, 1998, and as of that date is repealed.

SEC. 86. Section 24356.8 of the Revenue and Taxation Code is amended to read:

24356.8. (a) For each income year beginning on or after January 1, 1995, and before January 1, 2003, a taxpayer may elect to treat the cost of any Section 24356.8 property as an expense that is not chargeable to the capital account. Any cost so treated shall be allowed as a deduction for the income year in which the Section 24356.8 property is placed in service.

(b) (1) An election under this section for any income year shall meet both of the following requirements:

(A) Specify the items of Section 24356.8 property to which the election applies and the portion of the cost of each of those items that is to be taken into account under subdivision (a).

(B) Be made on the taxpayer's return of the tax imposed by this part for the income year.

(2) Any election made under this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(c) (1) For purposes of this section, "Section 24356.8 property" means any recovery property that is Section 1245 property (as defined in Section 1245(a)(3) of the Internal Revenue Code) and that the taxpayer acquires by purchase for exclusive use in a trade or business conducted within a LAMBRA.

(2) For purposes of paragraph (1), "purchase" means any acquisition of property, but only if all of the following apply:

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under Section 267 or 707(b) of the Internal Revenue Code (but, in applying Sections 267(b) and 267(c) of the Internal Revenue Code for purposes of this section, Section 267(c)(4) of the Internal Revenue Code shall be treated as providing that the family of an individual shall include only his or her spouse, ancestors, and lineal descendants).

(B) The property is not acquired by one component member of an affiliated group from another component member of the same affiliated group.

(C) The basis of the property in the hands of the person acquiring it is not determined in whole or in part by reference to the adjusted basis of that property in the hands of the person from whom acquired.

(3) For purposes of this section, the cost of property does not include so much of the basis of that property as is determined by reference to the basis of other property held at any time by the person acquiring that property.

(4) This section shall not apply to any property for which the taxpayer may not make an election for the income year under Section 179 of the Internal Revenue Code because of the provisions of Section 179(d) of the Internal Revenue Code.

(5) For purposes of subdivision (b), both of the following apply:

(A) All members of an affiliated group shall be treated as one taxpayer.

(B) The taxpayer shall apportion the dollar limitation contained in subdivision (f) among the component members of the affiliated group in whatever manner the board shall by regulations prescribe.

(6) For purposes of paragraphs (2) and (5), "affiliated group" has the meaning assigned to it by Section 1504 of the Internal Revenue Code, except that, for these purposes, the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in Section 1504(a) of the Internal Revenue Code.

(7) This section shall not apply to any property described in Section 168(f) of the Internal Revenue Code.

(8) In the case of an S corporation, the dollar limitation contained in subdivision (f) shall be applied at the entity level and at the shareholder level.

(d) For purposes of this section:

(1) "LAMBRA" means a local agency military base recovery area designated in accordance with the provisions of Section 7114 of the Government Code.

(2) "Taxpayer" means a corporation that conducts a trade or business within a LAMBRA and, for the first two income years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA.

(A) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the income year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second income year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the income year prior to commencing business operations in the LAMBRA shall be zero. If the taxpayer has a net increase in jobs in the state, the credit shall be allowed only if one or more full-time employees is employed within the LAMBRA.

(B) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(i) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(ii) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(C) In the case of a taxpayer that first commences doing business in the LAMBRA during the income year, for purposes of clauses (i) and (ii), respectively, of subparagraph (B), the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the income year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to claim additional depreciation pursuant to Section 24356 with respect to any property that constitutes Section 24356.8 property.

(f) The deduction allowable under subdivision (a) for any income year shall not exceed the following applicable amount for the income year of the designation of a LAMBRA and each income year thereafter:

The applicable amount is:	
Income year of designation	$ 5,000
1st income year thereafter	5,000
2nd income year thereafter	7,500
3rd income year thereafter	7,500
Each income year thereafter	10,000

(g) This section shall apply only to property that is used exclusively in a trade or business conducted within a LAMBRA.

(h) (1) Any amounts deducted under subdivision (a) with respect to property that ceases to be used in the trade or business within a LAMBRA at any time before the close of the second income year after the property was placed in service shall be included in income for that year.

(2) At the close of the second income year, if the taxpayer has not increased the number of its employees as determined by paragraph (2) of subdivision (d), then the amount of the deduction previously claimed shall be added to the taxpayer's net income for the taxpayer's second income year.

(i) Any taxpayer who elects to be subject to this section shall not be entitled to claim for the same property the deduction under Section 179 of the Internal Revenue Code, relating to an election to expense certain depreciable business assets.

(j) This section shall remain in effect only until December 1, 2003, and as of that date is repealed.

SEC. 87. Section 24357 of the Revenue and Taxation Code is amended to read:

24357. (a) There shall be allowed as a deduction any charitable contribution (as defined in Section 24359) payment of which is made within the income year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Franchise Tax Board.

(b) In the case of a corporation reporting its income on the accrual basis, if—

(1) The board of directors authorizes a charitable contribution during any income year; and

(2) Payment of the contribution is made after the close of that income year and on or before the 15th day of the third month following the close of that income year,

then the corporation may elect to treat the contribution as paid during that income year. The election may be made only at the time of the filing of the return for that income year, and shall be signified in any manner as the Franchise Tax Board shall by regulations prescribe.

(c) For purposes of this section, payment of a charitable contribution that consists of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to the actual possession or enjoyment of, the property have expired or are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in Section 24428. For purposes of the preceding sentence, a fixture which is intended to be severed from the real property shall be treated as tangible personal property.

(d) No deduction shall be allowed under this section for traveling expenses (including amounts expended for meals and lodging) while away from home, whether paid directly or by reimbursement, unless there is no significant element of personal pleasure, recreation, or vacation in that travel.

SEC. 88. Section 24358 of the Revenue and Taxation Code is amended to read:

24358. (a) In the case of a corporation, the total deductions under Section 24357 for any income year shall not exceed 10 percent of the taxpayer's net income computed without regard to any of the following:

(1) Subdivision (e) of Section 23802, relating to a deduction for built-in gains and passive investment income.

(2) Sections 24357 to 24359, inclusive, relating to the deduction for contributions.

(3) Article 2 (commencing with Section 24401) of Chapter 7 (except Sections 24407 to 24409, inclusive, relating to organizational expenses).

(b) Section 170(d)(2) of the Internal Revenue Code, relating to carryovers of excess contributions, shall apply with respect to excess contributions made during income years beginning on or after January 1, 1996.

SEC. 89. Section 24359 of the Revenue and Taxation Code is amended to read:

24359. For purposes of Sections 24357 to 24359, inclusive, the term "charitable contribution" means a contribution or gift to or for the use of—

(a) A state, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.

(b) A corporation, trust, or community chest, fund, or foundation—

(1) Created or organized in the United States or in any possession thereof, or under the law of the United States, any state, the District of Columbia, or any possession of the United States;

(2) Organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals;

(3) No part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(4) Which is not disqualified for tax exemption under Section 23701d by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this section only if it is to be used within the United States or any of its possessions exclusively for purposes specified in paragraph (2). Rules similar to the rules of subdivision (b) of Section 23701d shall apply for purposes of this section.

(c) A post or organization of war veterans, or an auxiliary unit or society of, or trust or foundation for, any post or organization of war veterans—

(1) Organized in the United States or any of its possessions, and

(2) No part of the net earnings of which inures to the benefit of any private shareholder or individual.

(d) A cemetery company owned and operated exclusively for the benefit of its members, or any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, if the company or corporation is not operated for profit and no part of the net earnings of the company or corporation inures to the benefit of any private shareholder or individual.

SEC. 90. Section 24402 of the Revenue and Taxation Code is amended to read:

24402. (a) A portion of the dividends received during the income year declared from income which has been included in the measure of the taxes imposed under Chapter 2 (commencing with Section 23101), Chapter 2.5 (commencing with Section 23400), or Chapter 3 (commencing with Section 23501) upon the taxpayer declaring the dividends.

(b) The portion of dividends which may be deducted under this section shall be as follows:

(1) In the case of any dividend described in subdivision (a), received from a "more than 50 percent owned corporation," 100 percent.

(2) In the case of any dividend described in subdivision (a), received from a "20 percent owned corporation," 80 percent.

(3) In the case of any dividend described in subdivision (a), received from a corporation that is less than 20 percent owned, 70 percent.

(c) For purposes of this section:

(1) The term "more than 50 percent owned corporation" means any corporation if more than 50 percent of the stock of that corporation (by vote and value) is owned by the taxpayer. For purposes of the preceding sentence, stock described in Section 1504(a)(4) of the Internal Revenue Code shall not be taken into account.

(2) The term "20 percent owned corporation" means any corporation if 20 percent or more of the stock of that corporation (by vote and value) is owned by the taxpayer. For purposes of the preceding sentence, stock described in Section 1504(a)(4) of the Internal Revenue Code shall not be taken into account.

SEC. 91. Section 24407 of the Revenue and Taxation Code is amended to read:

24407. The organizational expenditures of a corporation may, at the election of the corporation (made in accordance with regulations prescribed by the Franchise Tax Board), be treated as deferred expenses. In computing net income, the deferred expenses shall be allowed as a deduction ratably over that period of not less than 60 months as may be selected by the corporation (beginning with the month in which the corporation begins business).

SEC. 92. Section 24408 of the Revenue and Taxation Code is amended to read:

24408. The term "organizational expenditures" means any expenditure that meets all of the following requirements:

(a) Is incident to the creation of the corporation.

(b) Is chargeable to capital account.

(c) Is of a character which, if expended incident to the creation of a corporation having a limited life, would be amortizable over that life.

SEC. 93. Section 24409 of the Revenue and Taxation Code is amended to read:

24409. The election provided by Section 24407 may be made for any income year beginning after December 31, 1960, but only if made not later than the time prescribed by law for filing the return for that income year (including extensions thereof). The period so elected shall be adhered to in computing the income of the corporation for the income year for which the election is made and all subsequent income years. The election shall apply only with respect to the expenditures paid or incurred on or after June 23, 1961.

SEC. 94. Section 24411 of the Revenue and Taxation Code is amended to read:

24411. (a) For purposes of those taxpayers electing to compute income under Section 25110, 100 percent of the qualifying dividends described in subdivision (c) and 75 percent of other qualifying dividends to the extent not otherwise allowed as a deduction or eliminated from income. "Qualifying dividends" means those received by the water's-edge group from corporations if both of the following conditions are satisfied:

(1) The average of the property, payroll, and sales factors within the United States for the corporation is less than 20 percent.

(2) More than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned directly or indirectly by the water's-edge group.

(b) The water's-edge group consists of corporations whose income and apportionment factors are taken into account pursuant to Section 25110.

(c) Dividends derived from a construction project, the location of which is not subject to the taxpayer's control.

For purposes of this subdivision:

(1) "Construction project" means any activity which meets the following requirements:

(A) Is undertaken for any entity, including a governmental entity, which is not affiliated with the taxpayer.

(B) The majority of its cost of performance is attributable to an addition to real property or an alteration of land or any improvement thereto as those terms are utilized for purposes of this code.

"Construction project" does not include the operation, rental, leasing, or depletion of real property, land, or any improvement thereto.

(2) "Location of which is not subject to the taxpayer's control" means that the place at which the majority of the construction takes place results from the nature or character of the construction project and not as a result of the terms of the contract or agreement governing the construction project.

SEC. 95. Section 24416 of the Revenue and Taxation Code is amended to read:

24416. Except as provided in Sections 24416.1 and 24416.2, a net operating loss deduction shall be allowed in computing net income under Section 24341 and shall be determined in accordance with

Section 172 of the Internal Revenue Code, except as otherwise provided.

(a) (1) Net operating losses attributable to income years beginning before January 1, 1987, shall not be allowed.

(2) A net operating loss shall not be carried forward to any income year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that 50 percent of the entire amount of the net operating loss for any income year shall not be eligible for carryover to any subsequent income year.

(2) In the case of a taxpayer who has a net operating loss in an income year beginning on or after January 1, 1994, and who operates a new business during that income year, each of the following shall apply to each loss incurred during the first three income years of operating the new business:

(A) If the net operating loss is equal to or less than the net loss from the new business, 100 percent of the net operating loss shall be carried forward as provided in paragraph (2) of subdivision (e).

(B) If the net operating loss is greater than the net loss from the new business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the new business, 100 percent of that amount shall be carried forward as provided in paragraph (2) of subdivision (e).

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the new business, 50 percent of that amount shall be a net operating loss carryover to each of the five taxable years following the taxable year of the loss.

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(3) In the case of a taxpayer who has a net operating loss in an income year beginning on or after January 1, 1994, and who operates an eligible small business during that income year, each of the following shall apply:

(A) If the net operating loss is equal to or less than the net loss from the eligible small business, 100 percent of the net operating loss shall be carried forward to the income years specified in paragraph (1) of subdivision (e).

(B) If the net operating loss is greater than the net loss from the eligible small business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the eligible small business, 100 percent of that amount shall be carried forward to each of the five income years following the income year of the loss.

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the eligible small business, 50 percent of that amount shall be a net operating loss carryover to each of the five income years following the income year of the loss.

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(4) In the case of a taxpayer who has a net operating loss in an income year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three income years of the new business.

(5) In the case of a taxpayer who has a net operating loss in an income year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of paragraph (2), paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss.

(6) For purposes of this section, "net loss" means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

(c) For any income year in which the taxpayer has in effect a water's-edge election under Section 25110, the deduction of a net operating loss carryover shall be denied to the extent that the net operating loss carryover was determined by taking into account the income and factors of an affiliated corporation in a combined report whose income and apportionment factors would not have been taken into account if a water's-edge election under Section 25110 had been in effect for the income year in which the loss was incurred.

(d) Net operating loss carrybacks shall not be allowed.

(e) (1) Except as provided in paragraphs (2), (3), and (4), for each income year beginning on or after January 1, 1987, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute "five income years" in lieu of "15 taxable years."

(2) In the case of a "new business," the "five income years" referred to in paragraph (1) shall be modified to read as follows:

(A) "Eight income years" for a net operating loss attributable to the first income year of that new business.

(B) "Seven income years" for a net operating loss attributable to the second income year of that new business.

(C) "Six income years" for a net operating loss attributable to the third income year of that new business.

(3) For any carryover of a net operating loss for which a deduction is denied by Section 24416.3, the carryover period specified in this subdivision shall be extended as follows:

(A) By one year for a net operating loss attributable to income years beginning in 1991.

(B) By two years for a net operating loss attributable to income years beginning prior to January 1, 1991.

(4) The net operating loss attributable to income years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 income years following the year of the loss if it is incurred by a corporation that was either of the following:

(A) Under the jurisdiction of the court in a Title 11 or similar case at any time prior to January 1, 1994. The loss carryover provided in the preceding sentence shall not apply to any loss incurred in an income year after the income year during which the corporation is no longer under the jurisdiction of the court in a Title 11 or similar case.

(B) In receipt of assets acquired in a transaction that qualifies as a tax-free reorganization under Section 368(a)(1)(G) of the Internal Revenue Code.

(f) For purposes of this section:

(1) "Eligible small business" means any trade or business that has gross receipts, less returns and allowances, of less than one million dollars ($1,000,000) during the income year.

(2) Except as provided in subdivision (g), "new business" means any trade or business activity that is first commenced in this state on or after January 1, 1994.

(3) "Title 11 or similar case" shall have the same meaning as in Section 368(a)(3) of the Internal Revenue Code.

(4) In the case of any trade or business activity conducted by a partnership or an S corporation, paragraphs (1) and (2) shall be applied to the partnership or S corporation.

(g) For purposes of this section, in determining whether a trade or business activity qualifies as a new business under paragraph (2) of subdivision (e), the following rules shall apply:

(1) In any case where a taxpayer purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by the taxpayer (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and intangible property) used by the taxpayer (or any related person) in the conduct of its trade or business exceeds 20 percent of the aggregate fair market value of the total assets of the trade or business being conducted by the taxpayer (or any related person). For purposes of this paragraph only, the following rules shall apply:

(A) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the first income year in which the taxpayer (or any related person) first uses any of the acquired trade or business assets in its business activity.

(B) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring taxpayer (or related person).

(2) In any case where a taxpayer (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months ("prior trade or business activity"), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, than are any of the taxpayer's (or any related person's) current or prior trade or business activities.

(3) In any case where a taxpayer, including all related persons, is engaged in trade or business activities wholly outside of this state and the taxpayer first commences doing business in this state (within the meaning of Section 23101) after December 31, 1993 (other than by purchase or other acquisition described in paragraph (1)), the trade or business activity shall be treated as a new business under paragraph (2) of subdivision (e).

(4) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the taxpayer as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business under the rules of paragraph (1) of this subdivision.

(5) "Related person" shall mean any person that is related to the taxpayer under either Section 267 or 318 of the Internal Revenue Code.

(6) "Acquire" shall include any transfer, whether or not for consideration.

(7) (A) For income years beginning on or after January 1, 1997, the term "new business" shall include any taxpayer that is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and as further

amended, and that has not received regulatory approval for any product from the United States Food and Drug Administration.

(B) For purposes of this paragraph:

(i) "Biopharmaceutical activities" means those activities which use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities which make use of chemical compounds to produce commercial products.

(ii) "Other biotechnology activities" means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(h) For purposes of corporations whose net income is determined under Chapter 17 (commencing with Section 25101), Section 25108 shall apply to each of the following:

(1) The amount of net operating loss incurred in any income year which may be carried forward to another income year.

(2) The amount of any loss carry forward which may be deducted in any income year.

(i) The provisions of Section 172(b)(1)(K) of the Internal Revenue Code, relating to bad debt losses of commercial banks, shall not be applicable.

(j) The Franchise Tax Board may prescribe appropriate regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(k) The Franchise Tax Board may reclassify any net operating loss carryover determined under either paragraph (2) or (3) of subdivision (b) as a net operating loss carryover under paragraph (1) of subdivision (b) upon a showing that the reclassification is necessary to prevent evasion of the purposes of this section.

(*l*) The amendments made by the act adding this subdivision shall be operative for income years beginning on or after January 1, 1997.

SEC. 96. Section 24416.2 of the Revenue and Taxation Code is amended to read:

24416.2. The term "qualified taxpayer" as used in Section 24416.1 means any of the following:

(a) A corporation engaged in the conduct of a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(1) A net operating loss shall not be a net operating loss carryback for any income year and a net operating loss for any income year

beginning on or after the date that the area in which the taxpayer conducts a trade or business is designated as an enterprise zone shall be a net operating loss carryover to each of the 15 income years following the income year of loss.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the taxpayer's business activities within the enterprise zone (as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code) prior to the enterprise zone expiration date. That attributable loss shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section by substituting "enterprise zone" for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to the enterprise zone (as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code) determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section by substituting "enterprise zone" for "this state."

(C) "Enterprise zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(b) A corporation engaged in the conduct of a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(1) (A) A net operating loss shall not be a net operating loss carryback for any income year and, except as provided in subparagraph (B), a net operating loss for any income year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated the Los Angeles Revitalization Zone shall be a net operating loss carryover to each following income year that ends before the Los Angeles Revitalization Zone expiration date or to each of the 15 income years following the income year of loss, if longer.

(B) In the case of a financial institution to which Section 585, 586, or 593 of the Internal Revenue Code applies, a net operating loss for any income year beginning on or after January 1, 1984, shall be a net operating loss carryover to each of the five years following the income year of the loss. Subdivision (b) of Section 24416.1 shall not apply.

(2) For the purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the taxpayer's business activities within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) prior to the Los Angeles Revitalization Zone

expiration date. The attributable loss shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified as follows:

(i) The loss shall be apportioned to the Los Angeles Revitalization Zone by multiplying the loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The Los Angeles Revitalization Zone" shall be substituted for this state.

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) determined in accordance with the provisions of paragraph (3).

(3) Attributable income shall be that portion of the taxpayer's California source business income which is apportioned to the Los Angeles Revitalization Zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the Los Angeles Revitalization Zone in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17, modified as follows:

(A) Business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the income year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(C) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the income year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the income year.

(4) "Los Angeles Revitalization Zone expiration date" means the date the Los Angeles Revitalization Zone designation expires, is repealed, or becomes inoperative pursuant to Section 7102, 7103, or 7104 of the Government Code.

(5) This subdivision shall be inoperative on the first day of the income year beginning on or after the determination date, and each income year thereafter, with respect to the taxpayer's business activities within a geographic area that is excluded from the map pursuant to Section 7102 of the Government Code, or an excluded area determined pursuant to Section 7104 of the Government Code.

The determination date is the earlier of the first effective date of a determination under subdivision (c) of Section 7102 of the Government Code occurring after December 1, 1994, or the first effective date of an exclusion of an area from the amended Los Angeles Revitalization Zone under Section 7104 of the Government Code. However, if the taxpayer has any unused loss amount as of the date this section becomes inoperative, that unused loss amount may continue to be carried forward as provided in this subdivision.

(6) This subdivision shall cease to be operative on January 1, 1998. However, any unused net operating loss may continue to be carried over to following years as provided in this subdivision.

(c) For each income year beginning on or after January 1, 1995, and before January 1, 2003, a taxpayer engaged in the conduct of a trade or business within a LAMBRA.

(1) (A) A net operating loss shall not be a net operating loss carryback for any income year and, except as provided in subparagraph (B), a net operating loss for any income year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated a LAMBRA shall be a net operating loss carryover to each following income year that ends before the LAMBRA expiration date or to each of the 15 income years following the income year of loss, if longer.

(B) In the case of a financial institution to which Section 585, 586, or 593 of the Internal Revenue Code applies, a net operating loss for any income year beginning on or after January 1, 1984, shall be a net operating loss carryover to each of the five years following the income year of the loss. Subdivision (b) of Section 24416.1 shall not apply.

(2) For the purposes of this subdivision:

(A) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(B) "Taxpayer" means a corporation that conducts a trade or business within a LAMBRA and, for the first two income years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA and this state.

(i) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the income year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second income year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the income year prior to commencing business operations in the LAMBRA shall be zero. The deduction shall be allowed only if the taxpayer has a net

increase in jobs in the state, and if one or more full-time employees is employed within the LAMBRA.

(ii) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(I) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(II) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(iii) In the case of a taxpayer that first commences doing business in the LAMBRA during the income year, for purposes of subclauses (I) and (II), respectively, of clause (ii) the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the income year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(C) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the taxpayer's business activities within a LAMBRA prior to the LAMBRA expiration date. The attributable loss shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified as follows:

(i) Loss shall be apportioned to a LAMBRA by multiplying the loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The LAMBRA" shall be substituted for "this state."

(D) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to a LAMBRA determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified as follows:

(i) Business income shall be apportioned to a LAMBRA by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The LAMBRA" shall be substituted for "this state."

(iii) If a loss carryover is allowable pursuant to this section for any income year after the LAMBRA designation has expired, the LAMBRA shall be deemed to remain in existence for purposes of computing this limitation.

(E) "LAMBRA expiration date" means the date the LAMBRA designation expires, is no longer binding, or becomes inoperative pursuant to Section 7110 of the Government Code.

(d) A taxpayer who qualifies as a "qualified taxpayer" shall, for the income year of the net operating loss and any income year to which that net operating loss may be carried, designate on the original return filed for each year the subdivision of this section which applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one subdivision of this section,

the designation is to be made after taking into account subdivision (e).

(e) If a taxpayer is eligible to qualify under more than one subdivision of this section as a "qualified taxpayer," with respect to a net operating loss in an income year, the taxpayer shall designate which subdivision of this section is to apply to the taxpayer.

(f) Notwithstanding Section 24416, the amount of the loss determined under this section shall be the only net operating loss allowed to be carried over from that income year and the designation under subdivision (d) shall be included in the election under Section 24416.1.

SEC. 96.5. Section 24416.2 of the Revenue and Taxation Code is amended to read:

24416.2. The term "qualified taxpayer" as used in Section 24416.1 means any of the following:

(a) A corporation engaged in the conduct of a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(1) A net operating loss shall not be a net operating loss carryback for any income year and a net operating loss for any income year beginning on or after the date that the area in which the taxpayer conducts a trade or business is designated as an enterprise zone shall be a net operating loss carryover to each of the 15 income years following the income year of loss.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the taxpayer's business activities within the enterprise zone (as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code) prior to the enterprise zone expiration date. That attributable loss shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section by substituting "enterprise zone" for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to the enterprise zone (as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code) determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section by substituting "enterprise zone" for "this state."

(C) If a loss carryover is allowable pursuant to this section for any income year after the enterprise zone designation has expired, the enterprise zone shall be deemed to remain in existence for purposes of computing the limitation set forth in subparagraph (B) and allowing a net operating loss deduction.

(D) "Enterprise zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(b) A corporation engaged in the conduct of a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(1) (A) A net operating loss shall not be a net operating loss carryback for any income year and, except as provided in subparagraph (B), a net operating loss for any income year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated the Los Angeles Revitalization Zone shall be a net operating loss carryover to each following income year that ends before the Los Angeles Revitalization Zone expiration date or to each of the 15 income years following the income year of loss, if longer.

(B) In the case of a financial institution to which Section 585, 586, or 593 of the Internal Revenue Code applies, a net operating loss for any income year beginning on or after January 1, 1984, shall be a net operating loss carryover to each of the five years following the income year of the loss. Subdivision (b) of Section 24416.1 shall not apply.

(2) For the purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the taxpayer's business activities within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) prior to the Los Angeles Revitalization Zone expiration date. The attributable loss shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified as follows:

(i) The loss shall be apportioned to the Los Angeles Revitalization Zone by multiplying the loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The Los Angeles Revitalization Zone" shall be substituted for this state.

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) determined in accordance with the provisions of paragraph (3).

(C) If a loss carryover is allowable pursuant to this section for any income year after the Los Angeles Revitalization Zone designation has expired, the Los Angeles Revitalization Zone shall be deemed to remain in existence for purposes of computing the limitation set forth in subparagraph (B) and allowing a net operating loss deduction.

(3) Attributable income shall be that portion of the taxpayer's California source business income which is apportioned to the Los

Angeles Revitalization Zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the Los Angeles Revitalization Zone in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17, modified as follows:

(A) Business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the income year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(C) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the income year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the income year.

(4) "Los Angeles Revitalization Zone expiration date" means the date the Los Angeles Revitalization Zone designation expires, is repealed, or becomes inoperative pursuant to Section 7102, 7103, or 7104 of the Government Code.

(5) This subdivision shall be inoperative on the first day of the income year beginning on or after the determination date, and each income year thereafter, with respect to the taxpayer's business activities within a geographic area that is excluded from the map pursuant to Section 7102 of the Government Code, or an excluded area determined pursuant to Section 7104 of the Government Code. The determination date is the earlier of the first effective date of a determination under subdivision (c) of Section 7102 of the Government Code occurring after December 1, 1994, or the first effective date of an exclusion of an area from the amended Los Angeles Revitalization Zone under Section 7104 of the Government Code. However, if the taxpayer has any unused loss amount as of the date this section becomes inoperative, that unused loss amount may continue to be carried forward as provided in this subdivision.

(6) This subdivision shall cease to be operative on January 1, 1998. However, any unused net operating loss may continue to be carried over to following years as provided in this subdivision.

(c) For each income year beginning on or after January 1, 1995, and before January 1, 2003, a taxpayer engaged in the conduct of a trade or business within a LAMBRA.

(1) (A) A net operating loss shall not be a net operating loss carryback for any income year and, except as provided in

subparagraph (B), a net operating loss for any income year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated a LAMBRA shall be a net operating loss carryover to each following income year that ends before the LAMBRA expiration date or to each of the 15 income years following the income year of loss, if longer.

(B) In the case of a financial institution to which Section 585, 586, or 593 of the Internal Revenue Code applies, a net operating loss for any income year beginning on or after January 1, 1984, shall be a net operating loss carryover to each of the five years following the income year of the loss. Subdivision (b) of Section 24416.1 shall not apply.

(2) For the purposes of this subdivision:

(A) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(B) "Taxpayer" means a corporation that conducts a trade or business within a LAMBRA and, for the first two income years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA and this state.

(i) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the income year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second income year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the income year prior to commencing business operations in the LAMBRA shall be zero. The deduction shall be allowed only if the taxpayer has a net increase in jobs in the state, and if one or more full-time employees is employed within the LAMBRA.

(ii) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(I) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(II) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(iii) In the case of a taxpayer that first commences doing business in the LAMBRA during the income year, for purposes of subclauses (I) and (II), respectively, of clause (ii) the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the income year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(C) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1,

attributable to the taxpayer's business activities within a LAMBRA prior to the LAMBRA expiration date. The attributable loss shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified as follows:

(i) Loss shall be apportioned to a LAMBRA by multiplying the loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The LAMBRA" shall be substituted for "this state."

(D) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to a LAMBRA determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified as follows:

(i) Business income shall be apportioned to a LAMBRA by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The LAMBRA" shall be substituted for "this state."

(iii) If a loss carryover is allowable pursuant to this section for any income year after the LAMBRA designation has expired, the LAMBRA shall be deemed to remain in existence for purposes of computing this limitation.

(E) "LAMBRA expiration date" means the date the LAMBRA designation expires, is no longer binding, or becomes inoperative pursuant to Section 7110 of the Government Code.

(d) A taxpayer who qualifies as a "qualified taxpayer" shall, for the income year of the net operating loss and any income year to which that net operating loss may be carried, designate on the original return filed for each year the subdivision of this section which applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one subdivision of this section, the designation is to be made after taking into account subdivision (e).

(e) If a taxpayer is eligible to qualify under more than one subdivision of this section as a "qualified taxpayer," with respect to a net operating loss in an income year, the taxpayer shall designate which subdivision of this section is to apply to the taxpayer.

(f) Notwithstanding Section 24416, the amount of the loss determined under this section shall be the only net operating loss allowed to be carried over from that income year and the designation under subdivision (d) shall be included in the election under Section 24416.1.

SEC. 97. Section 24677 of the Revenue and Taxation Code is amended to read:

24677. (a) If an amount representing damages is received or accrued by a corporation during an income year as a result of an award in a civil action for breach of contract or breach of a fiduciary duty or relationship, then the tax attributable to the inclusion in gross

income for the income year of that part of the amount that would have been received or accrued by the corporation in a prior income year or years but for the breach of contract, or breach of a fiduciary duty or relationship, shall not be greater than the aggregate of the increases in taxes that would have resulted had that part been included in gross income for that prior income year or years.

(b) A corporation in computing the tax shall be entitled to deduct all credits and deductions for depletion, depreciation, and other items to which it would have been entitled, had the income been received or accrued by the corporation in the year during which it would have received or accrued it, except for the breach of contract or for the breach of fiduciary duty or relationship. The credits, deductions, or other items referred to in the prior sentence, attributable to property, shall be allowed only with respect to that part of the award which represents the corporation's share of income from the actual operation of the property.

(c) Subdivision (a) shall not apply unless the amount representing damage is three thousand dollars ($3,000) or more.

SEC. 98. Section 24678 of the Revenue and Taxation Code is amended to read:

24678. (a) If an amount representing damages is received or accrued during an income year as a result of an award in, or settlement of, a civil action brought under Section 4 of the act entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (commonly known as the Clayton Act), for injuries sustained by a corporation in its business or property by reason of anything forbidden in the antitrust laws, then the tax attributable to the inclusion of that amount in gross income for the income year shall not be greater than the aggregate of the increases in taxes which would have resulted if that amount had been included in gross income in equal installments for each month during the period in which the injuries were sustained by the corporation.

(b) This section shall apply to income years ending after June 23, 1961, but only with respect to amounts received or accrued after that date as a result of awards or settlements made after that date.

SEC. 99. Section 24901 of the Revenue and Taxation Code is amended to read:

24901. (a) The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in Section 24911 for determining gain, and the loss shall be the excess of the adjusted basis provided in that section for determining loss over the amount realized.

(b) The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received. In determining the amount realized—

(1) There shall not be taken into account any amount received as reimbursement for real property taxes which are treated under Section 24346 as imposed on the purchaser, and

(2) There shall be taken into account amounts representing real property taxes which are treated under Section 24346 as imposed on the corporation if those taxes are to be paid by the purchaser.

(c) In the case of a sale or exchange of property, the extent to which the gain or loss determined under this section shall be recognized for purposes of this part shall be determined under Section 24902.

(d) Nothing in this section shall be construed to prevent (in the case of property sold under contract providing for payment in installments) the taxation of that portion of any installment payment representing gain or profit in the year in which that payment is received.

(e) (1) In determining gain or loss from the sale or other disposition of a term interest in property, that portion of the adjusted basis of that interest which is determined pursuant to Sections 24914 and 24915 (to the extent that the adjusted basis is a portion of the entire adjusted basis of the property) shall be disregarded.

(2) For purposes of paragraph (1), the term "term interest in property" means—

(A) A life interest in property,

(B) An interest in property for a term of years, or

(C) An income interest in a trust.

(3) Paragraph (1) shall not apply to a sale or other disposition which is a part of a transaction in which the entire interest in property is transferred to any person or persons.

SEC. 100. Section 24912 of the Revenue and Taxation Code is amended to read:

24912. The basis of property shall be the cost of the property, except as otherwise provided in Chapter 8 (commencing with Section 24451), relating to corporate distributions and adjustments, and this chapter. The cost of real property shall not include any amount in respect of real property taxes which are treated under Section 24346 as imposed on a corporation.

SEC. 101. Section 24916 of the Revenue and Taxation Code is amended to read:

24916. Proper adjustment with regard to the property shall in all cases be made as follows:

(a) For expenditures, receipts, losses, or other items properly chargeable to capital account. However, no adjustment shall be made for any of the following:

(1) Sales or use tax paid or incurred in connection with the acquisition of property for which a tax credit is claimed pursuant to Section 23612.2.

(2) Taxes or other carrying charges described in Section 24426, or for expenditures described in Sections 24364 and 24369 for which

deductions have been taken in determining net income for the income year or any prior income year.

(b) For exhaustion, wear and tear, obsolescence, amortization, and depletion:

(1) In the case of corporations subject to the tax imposed by Chapter 2 (commencing with Section 23101), to the extent sustained prior to January 1, 1928, and to the extent allowed (but not less than the amount allowable) under this part, except that no deduction shall be made for amounts in excess of the amount which would have been allowable had depreciation not been computed on the basis of January 1, 1928, value and amounts in excess of the adjustments required by Section 113(b)(1)(B) of the Federal Revenue Act of 1938 for depletion prior to January 1, 1932.

(2) In the case of a taxpayer subject to the tax imposed by Chapter 3 (commencing with Section 23501), to the extent sustained prior to January 1, 1937, and for periods thereafter to the extent allowed (but not less than the amount allowable) under the provisions of this part.

(3) If a taxpayer has not claimed an amortization deduction for an emergency facility, the adjustment under paragraph (1) shall be made only to the extent ordinarily provided under Sections 24349 and 24372.

(c) In the case of stock (to the extent not provided for in the foregoing subdivisions) for the amount of distributions previously made which, under the law applicable to the year in which the distribution was made, either were tax free or were applicable in reduction of basis (not including distributions made by a corporation, which was classified as a personal service corporation under the provisions of the Federal Revenue Act of 1918 or 1921, out of its earnings or profits which were taxable in accordance with the provisions of Section 218 of the Federal Revenue Act of 1918 or 1921).

(d) (1) In the case of corporations subject to the tax imposed by Chapter 2 (commencing with Section 23101), in the case of any bond, as defined in Section 24363, to the extent of the deductions allowable pursuant to Section 24360 with respect thereto.

(2) In the case of taxpayers subject to the tax imposed by Chapter 3 (commencing with Section 23501), in the case of any bond, as defined in Section 24363, the interest on which is wholly exempt from the tax imposed by this part, to the extent of the amortizable bond premium disallowable as a deduction pursuant to subdivision (b) of Section 24360, and in the case of any other bond, as defined in Section 24363, to the extent of the deductions allowable pursuant to subdivision (a) of Section 24360 (or the amount applied to reduce interest payments under paragraph (2) of subdivision (a) of Section 24363.5) with respect thereto.

(3) In the case of property pledged to the Commodity Credit Corporation, to the extent of the amount received as a loan from the Commodity Credit Corporation and treated by the taxpayer as income for the year in which received pursuant to Section 24273, and

to the extent of any deficiency on that loan with respect to which the taxpayer has been relieved from liability.

(e) For amounts allowed as deductions as deferred expenses under Section 616(b) of the Internal Revenue Code, relating to certain expenditures in the development of mines, and resulting in a reduction of the taxpayer's tax, but not less than the amounts allowable under that section for the income year and prior years.

(f) For amounts allowable as deductions as deferred expenses under Section 617(a) of the Internal Revenue Code, relating to certain exploration expenditures, and resulting in a reduction of the taxpayer's tax, but not less than the amounts allowable under that section for the income year and prior years.

(g) For amounts allowed as deductions as deferred expenses under subdivision (a) of Section 24366, relating to research and experimental expenditures, and resulting in a reduction of the corporations' taxes under this part, but not less than the amounts allowable under that section for the income year and prior years.

(h) For amounts allowed as deductions under Sections 24356.2, 24356.3, and 24356.4.

(i) (1) To the extent provided in Section 179A(e)(6)(A) of the Internal Revenue Code, relating to basis reduction for clean-fuel vehicles and certain refueling property.

(2) This subdivision shall apply to property placed in service after June 30, 1993, without regard to income year.

SEC. 102. Section 24917 of the Revenue and Taxation Code is amended to read:

24917. Whenever it appears that the basis of property in the hands of the corporation is a substituted basis, then the adjustments provided in Section 24916 shall be made after first making in respect of that substituted basis proper adjustments of a similar nature in respect of the period during which the property was held by the transferor, donor, or grantor, or during which the other property was held by the person for whom the basis is to be determined. A similar rule shall be applied in the case of a series of substituted bases.

SEC. 103. Section 24942 of the Revenue and Taxation Code is amended to read:

24942. (a) No gain or loss shall be recognized to a corporation on the receipt of money or other property in exchange for stock (including treasury stock) of that corporation. No gain or loss shall be recognized by a corporation with respect to any lapse or acquisition of an option to buy or sell its stock (including treasury stock).

(b) For basis of property acquired by a corporation in certain exchanges for its stock, see Sections 24552 to 24554, inclusive.

SEC. 104. Section 25105 of the Revenue and Taxation Code is amended to read:

25105. (a) For purposes of this article, other than Section 25102, the income and apportionment factors of two or more corporations shall be included in a combined report only if the corporations,

otherwise meeting the requirements of Section 25101 or 25101.15, are members of a commonly controlled group.

(b) A "commonly controlled group" means any of the following:

(1) A parent corporation and any one or more corporations or chains of corporations, connected through stock ownership (or constructive ownership) with the parent, but only if—

(A) The parent owns stock possessing more than 50 percent of the voting power of at least one corporation, and, if applicable,

(B) Stock cumulatively representing more than 50 percent of the voting power of each of the corporations, except the parent, is owned by the parent, one or more corporations described in subparagraph (A), or one or more other corporations that satisfy the conditions of this subparagraph.

(2) Any two or more corporations, if stock representing more than 50 percent of the voting power of the corporations is owned, or constructively owned, by the same person.

(3) Any two or more corporations that constitute stapled entities.

(A) For purposes of this paragraph, "stapled entities" means any group of two or more corporations if more than 50 percent of the ownership or beneficial ownership of the stock possessing voting power in each corporation consists of stapled interests.

(B) Two or more interests are stapled interests if, by reason of form of ownership restrictions on transfer, or other terms or conditions, in connection with the transfer of one of the interests the other interest or interests are also transferred or required to be transferred.

(4) Any two or more corporations, all of whose stock representing more than 50 percent of the voting power of the corporations is cumulatively owned (without regard to the constructive ownership rules of paragraph (1) of subdivision (e)) by, or for the benefit of, members of the same family. Members of the same family are limited to an individual, his or her spouse, parents, brothers or sisters, grandparents, children and grandchildren, and their respective spouses.

(c) (1) If, in the application of subdivision (b), a corporation is eligible to be treated as a member of more than one commonly controlled group of corporations, the corporation shall elect to be treated as a member of only one commonly controlled group. This election shall remain in effect unless revoked with the approval of the Franchise Tax Board.

(2) Membership in a commonly controlled group shall be treated as terminated in any year, or fraction thereof, in which the conditions of subdivision (b) are not met, except as follows:

(A) When stock of a corporation is sold, exchanged, or otherwise disposed of, the membership of a corporation in a commonly controlled group shall not be terminated, if the requirements of subdivision (b) are again met immediately after the sale, exchange, or disposition.

(B) The Franchise Tax Board may treat the commonly controlled group as remaining in place if the conditions of subdivision (b) are again met within a period not to exceed two years.

(d) A taxpayer may exclude some or all corporations included in a "commonly controlled group" by reason of paragraph (4) of subdivision (b) by showing that those members of the group are not controlled directly or indirectly by the same interests, within the meaning of the same phrase in Section 482 of the Internal Revenue Code. For purposes of this subdivision, the term "controlled" includes any kind of control, direct or indirect, whether legally enforceable, and however exercisable or exercised.

(e) Except as otherwise provided, stock is "owned" when title to the stock is directly held or if the stock is constructively owned.

(1) An individual constructively owns stock that is owned by any of the following:

(A) His or her spouse.

(B) Children, including adopted children, of that individual or the individual's spouse, who have not attained the age of 21 years.

(C) An estate or trust, of which the individual is an executor, trustee, or grantor, to the extent that the estate or trust is for the benefit of that individual's spouse or children.

(2) Stock owned by a corporation, or a member of a controlled group of which the corporation is the parent corporation, is constructively owned by any shareholder owning stock that represents more than 50 percent of the voting power of the corporation.

(3) Stock owned by a partnership is constructively owned by any partner, other than a limited partner, in proportion to the partner's capital interest in the partnership. For this purpose, a partnership is treated as owning proportionately the stock owned by any other partnership in which it has a tiered interest, other than as a limited partner.

(4) In any case where a member of a commonly controlled group, or shareholders, officers, directors, or employees of a member of a commonly controlled group, is a general partner in a limited partnership, stock held by the limited partnership is constructively owned by a limited partner to the extent of its capital interest in the limited partnership.

(f) For purposes of this section, each of the following shall apply:

(1) "Corporation" means a subchapter S corporation, any other incorporated entity, or any entity defined or treated as a corporation pursuant to Section 23038 or 23038.5.

(2) "Person" means an individual, a trust, an estate, a qualified employee benefit plan, a limited partnership, or a corporation.

(3) "Voting power" means the power of all classes of stock entitled to vote that possess the power to elect the membership of the board of directors of the corporation.

(4) "More than 50 percent of the voting power" means voting power sufficient to elect a majority of the membership of the board of directors of the corporation.

(5) "Stock representing voting power" includes stock where ownership is retained but the actual voting power is transferred in either of the following manners:

(A) For one year or less.

(B) By proxy, voting trust, written shareholder agreement, or by similar device, where the transfer is revocable by the transferor.

(g) The Franchise Tax Board may prescribe any regulations as may be necessary or appropriate to carry out the purposes of this section, including, but not limited to, regulations that do the following:

(1) Prescribe terms and conditions relating to the election described by subdivision (c), and the revocation thereof.

(2) Disregard transfers of voting power not described by paragraph (5) of subdivision (f).

(3) Treat entities not described by paragraph (2) of subdivision (f) as a person.

(4) Treat warrants, obligations convertible into stock, options to acquire or sell stock, and similar instruments as stock.

(5) Treat holders of a beneficial interest in, or executor or trustee powers over, stock held by an estate or trust as constructively owned by the holder.

(6) Prescribe rules relating to the treatment of partnership agreements which authorize a particular partner or partners to exercise voting power of stock held by the partnership.

(h) This section shall apply to income years beginning on or after January 1, 1995.

SEC. 105. Section 25110 of the Revenue and Taxation Code is amended to read:

25110. (a) Notwithstanding Section 25101, a qualified taxpayer, as defined in paragraph (2) of subdivision (b), that is subject to the tax imposed under this part, may elect to determine its income derived from or attributable to sources within this state pursuant to a water's-edge election in accordance with the provisions of this part, as modified by this article. A taxpayer that makes a water's-edge election shall take into account the income and apportionment factors of the following affiliated entities only:

(1) Domestic international sales corporations, as described in Sections 991 to 994, inclusive, of the Internal Revenue Code and foreign sales corporations as described in Sections 921 to 927, inclusive, of the Internal Revenue Code.

(2) Any corporation (other than a bank), regardless of the place where it is incorporated if the average of its property, payroll, and sales factors within the United States is 20 percent or more.

(3) Corporations that are incorporated in the United States, excluding corporations making an election pursuant to Sections 931

to 936, inclusive, of the Internal Revenue Code, of which more than 50 percent of their voting stock is owned or controlled directly or indirectly by the same interests.

(4) A corporation that is not described in paragraphs (1) to (3), inclusive, or paragraph (5), but only to the extent of its income derived from or attributable to sources within the United States and its factors assignable to a location within the United States in accordance with paragraph (3) of subdivision (b). Income of that corporation derived from or attributable to sources within the United States as determined by federal income tax laws shall be limited to and determined from the books of account maintained by the corporation with respect to its activities conducted within the United States.

(5) Export trade corporations, as described in Sections 970 to 972, inclusive, of the Internal Revenue Code.

(6) Any affiliated corporation which is a "controlled foreign corporation," as defined in Section 957 of the Internal Revenue Code, if all or part of the income of that affiliate is defined in Section 952 of Subpart F of the Internal Revenue Code ("Subpart F income"). The income and apportionment factors of any affiliate to be included under this paragraph shall be determined by multiplying the income and apportionment factors of that affiliate without application of this paragraph by a fraction (not to exceed one), the numerator of which is the "Subpart F income" of that corporation for that income year and the denominator of which is the "earnings and profits" of that corporation for that income year, as defined in Section 964 of the Internal Revenue Code.

(7) (A) The income and factors of the above-enumerated corporations shall be taken into account only if the income and factors would have been taken into account under Section 25101 if this section had not been enacted.

(B) The income and factors of a corporation that is not described in paragraphs (1) to (3), inclusive, and paragraph (5) and that is an electing taxpayer under this subdivision shall be taken into account in determining its income only to the extent set forth in paragraph (4).

(b) For purposes of this article and Section 24411:

(1) An "affiliated corporation" means a corporation that is a member of a commonly controlled group as defined in Section 25105.

(2) A "qualified taxpayer" means a corporation which does both of the following:

(A) Files with the state tax return on which the water's-edge election is made a consent to the taking of depositions at the time and place most reasonably convenient to all parties from key domestic corporate individuals and to the acceptance of subpoenas duces tecum requiring reasonable production of documents to the Franchise Tax Board as provided in Section 19504 or by the State Board of Equalization as provided in Title 18, California Code of

Regulations, Section 5005, or by the courts of this state as provided in Chapter 2 (commencing with Section 1985) of Title 3 of Part 4 of, and Section 2025 of, the Code of Civil Procedure. The consent relates to issues of jurisdiction and service and does not waive any defenses a taxpayer may otherwise have. The consent shall remain in effect so long as the water's-edge election is in effect and shall be limited to providing that information necessary to review or to adjust income or deductions in a manner authorized under Sections 482, 861, Subpart F of Part III of Subchapter N, or similar provisions of the Internal Revenue Code, together with the regulations adopted pursuant to those provisions, and for the conduct of an investigation with respect to any unitary business in which the taxpayer may be involved.

(B) Agrees that for purposes of this article, dividends received by any corporation whose income and apportionment factors are taken into account pursuant to subdivision (a) from either of the following are functionally related dividends and shall be presumed to be business income:

(i) A corporation of which more than 50 percent of the voting stock is owned, directly or indirectly, by members of the unitary group and which is engaged in the same general line of business.

(ii) Any corporation that is either a significant source of supply for the unitary business or a significant purchaser of the output of the unitary business, or that sells a significant part of its output or obtains a significant part of its raw materials or input from the unitary business. "Significant," as used in this subparagraph, means an amount of 15 percent or more of either input or output.

All other dividends shall be classified as business or nonbusiness income without regard to this subparagraph.

(3) The definitions and locations of property, payroll, and sales shall be determined under the laws and regulations that set forth the apportionment formulas used by the individual states to assign net income subject to taxes on or measured by net income in that state. If a state does not impose a tax on or measured by net income or does not have laws or regulations with respect to the assignment of property, payroll, and sales, the laws and regulations provided in Article 2 (commencing with Section 25120) shall apply.

Sales shall be considered to be made to a state only if the corporation making the sale may otherwise be subject to a tax on or measured by net income under the Constitution or laws of the United States, and shall not include sales made to a corporation whose income and apportionment factors are taken into account pursuant to subdivision (a) in determining the amount of income of the taxpayer derived from or attributable to sources within this state.

(4) "The United States" means the 50 states of the United States and the District of Columbia.

(c) All references in this part to income determined pursuant to Section 25101 shall also mean income determined pursuant to this section.

SEC. 106. Section 25111 of the Revenue and Taxation Code is amended to read:

25111. (a) The making of a water's-edge election as provided for in Section 25110 shall be made by contract with the Franchise Tax Board in the original return for a year and shall be effective only if every taxpayer that is a member of the water's-edge group and which is subject to tax under this part makes the election. A single taxpayer that is engaged in more than one business activity subject to allocation and apportionment as provided in Article 2 (commencing with Section 25120) of Chapter 17 may make a separate election for each business. The form and manner of making the water's-edge election shall be prescribed by the Franchise Tax Board. Each contract making a water's-edge election shall be for an initial term of 84 months, except as provided in subdivision (b). Each contract shall provide that on the anniversary date of the contract or any other annual date specified by the contract a year shall be added automatically to the initial term unless notice of nonrenewal is given as provided in subdivision (d). An affiliated corporation that is a member of the water's-edge group and subsequently becomes subject to tax under this part or is a nonelecting taxpayer that is subsequently proved to be a member of the water's-edge group pursuant to a Franchise Tax Board audit determination, as evidenced by a notice of deficiency proposed to be assessed or a notice of tax change, shall be deemed to have elected.

No water's-edge election shall be made for an income year beginning prior to January 1, 1988.

(b) A water's-edge election may be terminated by a taxpayer prior to the end of the 84-month period if either of the following occurs:

(1) The taxpayer is acquired directly or indirectly by a nonelecting entity which alone or together with those affiliates included in its combined report is larger than the taxpayer as measured by equity capital.

(2) With the permission of the Franchise Tax Board.

(c) In granting a change of election, the Franchise Tax Board shall impose any conditions that are necessary to prevent the avoidance of tax or to clearly reflect income for the period the election was, or was purported to be, in effect. These conditions may include a requirement that income, including dividends paid from income earned while a water's-edge election was in effect, which would have been included in determining the income of the taxpayer from sources within and without this state pursuant to Section 25101 but for the water's-edge election shall be included in income in the year in which the election is changed.

(d) If the taxpayer desires in any year not to renew the election, the taxpayer shall serve written notice of nonrenewal upon the board

at least 90 days in advance of the annual renewal date. Unless that written notice is provided to the board, the election shall be considered renewed as provided in subdivision (a).

(e) If the taxpayer serves notice of intent in any year not to renew the existing water's-edge election, that existing election shall remain in effect for the balance of the period remaining since the original election or the last renewal of the election, as the case may be.

SEC. 107. Section 25112 of the Revenue and Taxation Code is amended to read:

25112. (a) If a taxpayer electing to file under Section 25110 fails to supply any information described in subdivision (b), the taxpayer shall pay a penalty of one thousand dollars ($1,000) for each income year with respect to which the failure occurs.

(b) A taxpayer electing to file pursuant to Section 25110 shall do all of the following:

(1) Retain and make available to the Franchise Tax Board, upon request, the documents and information, including any questionnaires completed and submitted to the Internal Revenue Service or qualified states, that are necessary to audit issues involving attribution of income to the United States or foreign jurisdictions under Sections 482, 861, 863, 902, and 904, and Subpart F of Part III of Subchapter N, or similar sections of the Internal Revenue Code.

(2) Identify, upon request, principal officers or employees who have substantial knowledge of, and access to, documents and records that discuss pricing policies, profit centers, cost centers, and the methods of allocating income and expense among these centers. The information shall include the employees' titles and addresses.

(3) Retain and make available, upon request, all documents and correspondence ordinarily available to a corporation included in the water's-edge election that are submitted to, or obtained from, the Internal Revenue Service, foreign countries or their territories or possessions, and competent authority pertaining to ruling requests, rulings, settlement resolutions, and competing claims involving jurisdictional assignment and sourcing of income that affect the assignment of income to the United States. The documents shall include all ruling requests and rulings on reorganizations involving foreign incorporation of branches, all ruling requests and rulings on changing a corporation's jurisdictional incorporation, and all documents that are ordinarily available to a corporation included in the water's-edge election that pertain to the determination of foreign tax liability, including examination reports issued by foreign taxing administrations. If the documents have been translated, the translations shall be furnished.

(4) Retain and make available, upon request, information filed with the Internal Revenue Service to comply with Sections 6038, 6038A, 6038B, 6038C, and 6041 of the Internal Revenue Code.

(5) Upon request, prepare and make available for each corporation organized or created under the laws of the United States

or a political subdivision thereof, of which 50 percent or more of its voting stock is directly or indirectly owned or controlled, the information that would be included in the forms described in paragraph (4) if those forms were required for United States corporations.

(6) Retain and make available, upon request, all state tax returns filed by each corporation included under subdivision (a) in each state, including the District of Columbia.

(7) Comply with reasonable requests for information necessary to determine or verify its net income, apportionment factors, or the geographic source of that income pursuant to the Internal Revenue Code.

(8) For purposes of this subdivision, information for any year shall be retained for that period of time in which the taxpayer's income or franchise tax liability to this state may be subject to adjustment, including all periods in which additional income or franchise taxes may be assessed or during which an appeal is pending before the State Board of Equalization or a lawsuit is pending in the courts of this state or the United States with respect to California franchise or income tax.

(c) If the failure continues for more than 90 days after the date on which the Franchise Tax Board mails notice of that failure to the taxpayer, the taxpayer shall pay a penalty (in addition to the amount required under subdivision (a)) of one thousand dollars ($1,000) for each 30-day period (or fraction thereof) during which the failure continues after the expiration of the 90-day period. The increase in any penalty under this subdivision shall not exceed twenty-four thousand dollars ($24,000).

(d) If the taxpayer fails to comply substantially with any formal document request arising out of the examination of the tax treatment of any item (hereafter in this section referred to as the "examined item") before the 90th day after the date of the mailing of the request, any court having jurisdiction of a civil proceeding in which the tax treatment of the examined item is an issue may, upon motion by the Franchise Tax Board, prohibit the introduction by the taxpayer of documentation covered by that request.

(e) For purposes of this section, the time in which information is to be furnished (and the beginning of the 90-day period after notice by the Franchise Tax Board) shall be treated as beginning not earlier than the last day on which reasonable cause existed for failure to furnish the information.

(f) This section shall not apply with respect to any requested documentation if the taxpayer establishes that the failure to provide the documentation, as requested by the Franchise Tax Board, is due to reasonable cause. For purposes of subdivision (d), the fact that a foreign jurisdiction would impose a civil or criminal penalty on the taxpayer (or any other person) for disclosing the requested

documentation is not reasonable cause unless, after in-camera review of the documentation, the court finds otherwise.

(g) For purposes of this section, the term "formal document request" means any request (made after the normal request procedures have failed to produce the requested documentation) for the production of documentation that is mailed by registered or certified mail to the taxpayer at its last known address and that sets forth all of the following:

(1) The time and place for the production of the documentation.

(2) A statement of the reason the documentation previously produced (if any) is not sufficient.

(3) A description of the documentation being sought.

(4) The consequences to the taxpayer of the failure to produce the documentation described in this section.

(h) Notwithstanding any other law or rule of law, any taxpayer to whom a formal document request is mailed may begin a proceeding to quash that request not later than the 90th day after the date the request was mailed. In that proceeding, the Franchise Tax Board may seek to compel compliance with the request.

(i) The superior courts of the State of California for the Counties of Los Angeles, Sacramento, and San Diego, and for the City and County of San Francisco shall have jurisdiction to hear any proceeding brought under subdivision (h). An order denying the petition shall be deemed a final order that may be appealed.

The running of the 90-day period referred to in subdivision (c) shall be suspended during any period during which a proceeding brought under subdivision (h) is pending.

(j) For purposes of this section, "documentation" means any documentation which may be relevant or material to the tax treatment of the examined item.

(k) The Franchise Tax Board, and any court having jurisdiction over a proceeding under subdivision (g), may extend the 90-day period referred to in subdivision (b).

(*l*) If any corporation takes any action as provided in subdivision (h), the running of any period of limitations under Sections 19057 to 19067, inclusive (relating to the assessment and collection of tax), or under Section 19704 (relating to criminal prosecutions) with respect to that corporation shall be suspended for the period during which the proceedings under subdivision (h) and appeals thereto are pending.

SEC. 108. Section 25128 of the Revenue and Taxation Code is amended to read:

25128. (a) Notwithstanding Section 38006, all business income shall be apportioned to this state by multiplying the business income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four, except as provided in subdivision (b) or (c).

(b) If an apportioning trade or business derives more than 50 percent of its "gross business receipts" from conducting one or more qualified business activities, all business income of the apportioning trade or business shall be apportioned to this state by multiplying business income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

(c) For purposes of this section, a "qualified business activity" means the following:

(1) An agricultural business activity.

(2) An extractive business activity.

(3) A savings and loan activity.

(4) A banking or financial business activity.

(d) For purposes of this section:

(1) "Gross business receipts" means gross receipts described in subdivision (e) of Section 25120 (other than gross receipts from sales or other transactions within an apportioning trade or business between members of a group of corporations whose income and apportionment factors are required to be included in a combined report under Section 25101, limited, if applicable, by Section 25110), whether or not the receipts are excluded from the sales factor by operation of Section 25137.

(2) "Agricultural business activity" means activities relating to any stock, dairy, poultry, fruit, furbearing animal, or truck farm, plantation, ranch, nursery, or range. "Agricultural business activity" also includes activities relating to cultivating the soil or raising or harvesting any agricultural or horticultural commodity, including, but not limited to, the raising, shearing, feeding, caring for, training, or management of animals on a farm as well as the handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated.

(3) "Extractive business activity" means activities relating to the production, refining, or processing of oil, natural gas, or mineral ore.

(4) "Savings and loan activity" means any activities performed by savings and loan associations or savings banks which have been chartered by federal or state law.

(5) "Banking or financial business activity" means activities attributable to dealings in money or moneyed capital in substantial competition with the business of national banks.

(6) "Apportioning trade or business" means a distinct trade or business whose business income is required to be apportioned under Sections 25101 and 25120, limited, if applicable, by Section 25110, using the same denominator for each of the applicable payroll, property, and sales factors.

(7) Paragraph (4) of subdivision (c) shall apply only if the Franchise Tax Board adopts the Proposed Multistate Tax

Commission Formula for the Uniform Apportionment of Net Income from Financial Institutions, or its substantial equivalent, and shall become operative upon the same operative date as the adopted formula.

(8) In any case where the income and apportionment factors of two or more savings associations or corporations are required to be included in a combined report under Section 25101, limited, if applicable, by Section 25110, both of the following shall apply:

(A) The application of the more than 50 percent test of subdivision (b) shall be made with respect to the "gross business receipts" of the entire apportioning trade or business of the group.

(B) The entire business income of the group shall be apportioned in accordance with either subdivision (a) or (b), as applicable.

SEC. 109. Section 56 of Chapter 952 of the Statutes of 1996 is amended to read:

SEC. 56. Except as otherwise provided, the provisions of this act shall be applied to taxable or income years beginning on or after January 1, 1997.

SEC. 110. The Legislature finds and declares all of the following:

(a) Except as otherwise provided in subdivision (b) or Section 114 of this act, the amendments to Sections 18402, 18604, 18606, 18621.5, 18637, 18638, 18662, 18670, 19009, 19011, 19023, 19024, 19058, 19132.5, 19141.5, 19141.6, 19147, 19164, 19192, 19254, 19263, 19301, 19392, 19411, 19542, 19563, 19701, 19705, 19706, 19719, 23037, 23038, 23040.1, 23095, 23098, 23151, 23151.1, 23151.2, 23153, 23303, 23305.2, 23334, 23455, 23501, 23610.5, 23612.6, 23623.5, 23625, 23645, 23646, 23731, 24346, 24356.4, 24356.8, 24357, 24358, 24359, 24402, 24407, 24408, 24409, 24411, 24416, 24416.2, 24677, 24678, 24901, 24912, 24916, 24917, 24942, 25105, 25110, 25111, 25112, and 25128 of the Revenue and Taxation Code are consistent with the intent of the acts enacting those sections, and as such shall apply from the original effective dates of those acts.

(b) The amendments to Sections 17052.15, 17053.45, 17053.46, 23612.6, 23645, and 23646 of the Revenue and Taxation Code made by this act that relate to the election of the credit to be claimed are consistent with the intent of the Los Angeles Revitalization Zone Act and the Local Military Base Recovery Area Act, and as such shall apply from the original effective dates of those acts.

(c) This act repeals Sections 23184, 23184.5, 23185, 23185a, and 23185b of the Revenue and Taxation Code which have been obsolete since January 1, 1981, when the provisions of Chapter 1150 of the Statutes of 1979 took effect, providing financial corporations with the same taxation treatment as banks, thereby prohibiting the imposition of personal property taxes or business license taxes on financial corporations by local jurisdictions. The repeal made by this act shall not affect any act done or any right accruing or accrued, or any suit, appeal, or other proceeding that commenced under Section 23184, 23184.5, 23185, 23185a, or 23185b of the Revenue and Taxation Code before that repeal.

SEC. 111. The amendments to Section 23186 of, and the repeal of Sections 23186.1, 23186.2, and 23186.5 of, the Revenue and Taxation Code made by this act shall become operative on January 1, 1998.

SEC. 112. The amendments to Section 24411 of the Revenue and Taxation Code made by this act shall apply to income years beginning on or after January 1, 1998.

SEC. 113. It is the intent of the Legislature to replace the code section references to the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition, that are contained in the Revenue and Taxation Code with code section references to the North American Industry Classification System (NAICS), expected to be published in 1997. Publication of NAICS is not to be construed to impair the ability of any taxpayer to rely on a SIC classification for the purposes of determining eligibility for the manufacturers investment tax credit.

SEC. 114. (a) Section 47.5 of this bill incorporates amendments to Section 23038 of the Revenue and Taxation Code proposed by both this bill and SB 1234. 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 23038 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 1234, in which case Section 23038 of the Revenue and Taxation Code, as amended by SB 1234, shall remain operative only until the operative date of this bill, at which time Section 47.5 of this bill shall become operative, and Section 47 of this bill shall not become operative.

(b) If Section 47.5 of this bill becomes operative, both of the following shall apply:

(1) The amendments made to Section 23038 of the Revenue and Taxation Code by only this bill shall be applied from the original effective date of the act enacting Section 23038 of the Revenue and Taxation Code. The Legislature finds and declares that the amendments made to Section 23038 of the Revenue and Taxation Code by this bill are consistent with the intent of the act enacting that section.

(2) The amendments to Section 23038 of the Revenue and Taxation Code made only by SB 1234 shall be operative for income years beginning on or after January 1, 1997.

SEC. 115. Section 96.5 of this bill incorporates amendments to Section 24416.2 of the Revenue and Taxation Code proposed by this bill and SB 1106. 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 24416.2 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 1106, in which case Section 24416.2 of the Revenue and Taxation Code, as amended by SB 1106, shall remain operative only until the operative date of this bill, at which time

Section 96.5 of this bill shall become operative, and Section 96 of this bill shall not become operative.

CHAPTER 606

An act to amend Section 8176 of the Education Code, to amend Sections 15301.3 and 16262.5 of the Government Code, to amend Sections 1522, 1522.03, 1568.09, 1569.17, 1569.172, 1596.871, 1596.8713, and 1597.59 of, and to add Section 1522.04 to, the Health and Safety Code, to add Section 11166.95 to the Penal Code, to amend Section 10206 of, to amend, repeal, and add Section 1088.5 of, and to add Sections 9616.1, and 9616.5 to, the Unemployment Insurance Code, to amend Sections 10101, 10824, 11462, 12201, 12201.03, 12550, 12551, 12552, 14132.95, 15200, 16525.10, 16525.15, and 16525.27 of, to amend the heading of Article 2 (commencing with Section 16525.10) of Chapter 5.3 of Part 4 of Division 9 of, to amend and repeal Section 15200.95 of, to add Sections 10069.5, 10823, 10823.5, 11526.5, 12301.7, 12305.6, 15200.05, 15204.15, 15204.25, 18205, and 19806.1 to, to add Chapter 15 (commencing with Section 18996) to Part 6 of Division 9 of, to repeal Sections 11280, 15200.2, 15200.3, 15200.8, 15200.85, 15200.9, 15200.91, and 16525.28 of, to repeal Article 3 (commencing with Section 16525.40) of Chapter 5.3 of Part 4 of Division 9 of, and to repeal, add, and repeal Sections 15200.1 and 15200.7 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 October 1, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Section 8176 of the Education Code is amended to read:

8176. (a) An employment agency, as defined in Section 1812.501 of the Civil Code, that refers a child care provider to parents or guardians who are not required to be a licensed child day care facility shall not make a placement of a provider who is not a trustline applicant or a registered trustline child care provider.

(b) Any violation of this section shall be a misdemeanor and shall be punishable by a fine of one hundred dollars ($100).

SEC. 1.5. Section 15301.3 of the Government Code is amended to read:

15301.3. Any county or city authorized in Section 15301 electing to use a state armory or armories for the purpose of this chapter, in consultation with the Community Advisory Committee appointed pursuant to Section 438 of the Military and Veterans Code or, if no

committee has been appointed, in consultation with the Adjutant General, shall obtain a license from the Military Department with the following requirements:

(a) The county or city obtaining a license shall be solely responsible for measures and costs required to comply with state and local health and safety codes during the license periods.

(b) The county or city obtaining a license shall be responsible for all legal liabilities during the license periods and the state shall be held harmless in each case.

(c) The county or city obtaining a license shall be responsible for all costs of providing shelter in the state armory or armories to homeless persons during the license periods, including, but not limited to, all costs for minor emergency repairs, including, but not limited to, plumbing and electrical work, and shall reimburse the Military Department for all costs of providing armories for shelter operations including, but not limited to, utilities, building maintenance and repair, administrative costs, and for National Guardsman for the security of military equipment and property.

(d) The county or city obtaining a license shall be solely responsible for alternative housing arrangements, including relocation measures and transportation, for homeless persons housed in state armories during the license periods, upon notification from the Military Department that the armory or armories shall be required for military activities or emergency purposes as announced by the Governor. The Military Department or the Governor shall determine the evacuation deadline.

(e) The county or city obtaining a license shall be responsible for providing uniformed security personnel from one hour before the shelter opens until one hour after lights out. The county or city shall also ensure that officers from the local law enforcement agency with jurisdiction over the armory will conduct periodic visits to the armory on each night of operation.

(f) The county or city obtaining a license shall be responsible for providing janitorial service from a licensed contractor or qualified civil service employees in order to meet state health and sanitation standards for restrooms and shower facilities.

SEC. 1.6. Section 1.5 of this act shall not become operative unless both Assembly Bill 242 and Senate Bill 255 are chaptered during 1997.

SEC. 2. Section 16262.5 of the Government Code is amended to read:

16262.5. (a) Notwithstanding any other provision of law, until June 30, 1998, the reimbursement of counties meeting one of the following conditions shall not be reduced for the state share of the nonfederal costs for the administration of the In-Home Supportive Services program.

(1) County-imposed funding reductions in the 1996–97 or 1997–98 fiscal year prevent a county from fully funding the county share of

the nonfederal administrative costs of the programs identified in subdivision (a).

(2) Application for relief under Section 16262 and this section was approved in a prior fiscal year for which relief is sought pursuant to these sections and the level of county match available is at least the amount specified in the application for that same fiscal year subject to the restrictions contained in subdivision (b).

(b) Subdivision (a) shall be subject to the following restrictions:

(1) The reduction imposed upon departments within a county responsible for administering the program referred to in subdivision (a) shall be proportionate to the average reduction in county funds for administrative activities imposed on all other departments within a county, except departments funded with revenue from Section 35 of Article XIII of the California Constitution and the county departments of health services. The county board of supervisors shall certify that the reductions are imposed proportionately.

(2) If a county reduces the department responsible for administering the program referred to in subdivision (a), and makes reductions that exceed the average reduction of any other county departments, with the exception of departments funded with revenue from Section 35 of Article XIII of the California Constitution, and the county departments of health services, then the state allocation for that program shall be reduced by the same percentage.

(3) The state share of nonfederal costs for county administration allocated to a county for the administration of the programs referred to in subdivision (a) shall be limited to the 1996–97 or 1997–98 fiscal year allocations as determined by the State Department of Social Services in compliance with current allocation formulas as adjusted pursuant to paragraph (2).

(4) No reduction in county administrative costs authorized by this section shall result in any increased cost to the state General Fund.

(5) No reduction in county administrative costs authorized by this section shall result in any decrease in county assistance payments in the program referred to in subdivision (a).

(6) Except for those counties approved for fiscal relief in either the 1995–96 or 1996–97 fiscal year, the maximum rate reduction shall not exceed 15 percent of the required county match. For counties that received fiscal relief in either the 1995–96 or 1996–97 fiscal year, the county match shall be the greater of 50 percent of the required county match for the year relief is being requested, or alternatively, the county match approved in either the 1995–96 or 1996–97 fiscal year.

(c) Counties requesting relief under this section shall apply to the State Department of Social Services on or before October 31 of the fiscal year for which relief is sought pursuant to this section.

SEC. 3. Section 1522 of the Health and Safety Code is amended to read:

1522. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a community care facility, foster family home, or a certified family home. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety, and that when live-scan technology is operational in the district office of the Community Care Licensing Division of the State Department of Social Services that serves the facility, that individuals obtain a criminal record or exemption before their initial presence in a community care facility.

(a) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation, or arrested for any crime specified in Section 290 of the Penal Code or arrested for violating Section 245, 273.5, paragraph (b) of Section 273a, or prior to January 1, 1994 paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, of any of those persons. No fee shall be charged by the Department of Justice or the State Department of Social Services for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section. If it is found that the applicant, or any other person specified in subdivision (b), has been convicted of, or is awaiting trial for, a crime other than a minor traffic violation, the Department of Justice shall notify the State Department of Social Services of the fact and the application shall be denied, unless the director grants an exemption pursuant to subdivision (f). If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(b) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff.

(2) Any person, other than a client, residing in the facility.

(3) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene.

(4) (A) Any staff person, volunteer, or employee who has contact with the clients. A volunteer shall be exempt from the requirements of this subdivision if the volunteer is a relative of a client in care at the facility and is not used to replace or supplement staff in providing direct care and supervision of clients.

(B) For an adult residential facility, a volunteer shall be exempt from the requirements in this subdivision if the volunteer is a relative, significant other, or close friend of a client in care at the facility, and is not used to replace or supplement staff in providing direct care and supervision of clients.

(5) Except for staff members of social rehabilitation facilities serving minors with alcohol or drug abuse problems, staff members of social rehabilitation facilities, other than those specified in paragraphs (1) and (2), are exempt from fingerprinting requirements.

(6) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(7) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice or comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the community care facility. These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints and submitted to the Department of Justice by the licensee. A licensee's failure to submit fingerprints to the Department of Justice, or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The fingerprints shall then be submitted to the State Department of Social Services for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within six business days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within six business days of receipt of the fingerprints. The licensee shall maintain a copy of the individual's clearance or exemption at the facility.

If new fingerprints are required for processing, the Department of Justice shall, within six business days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (f). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (2) seek an exemption pursuant to subdivision (f). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered.

(4) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulation to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the State Department of Social Services or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other adult person residing in the home has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code or arrested for violating Section 245, 273.5, subdivision (b) of Section 273a, or prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons. No fee shall be charged by the Department of Justice or the State Department of Social Services for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant. If the applicant or other persons specified in this subdivision have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied. For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

(2) Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions or arrests for any crime against a child, spousal/cohabitant abuse or for any crime for which the department cannot grant an exemption if the person was convicted and shall submit these fingerprints to the licensing agency or other approving authority. The foster family agency shall obtain fingerprints from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice. The foster home licensee or foster family agency shall submit the fingerprints to the Department of Justice, or comply with paragraph (1) of subdivision (h) prior to the person's employment, residence, or initial presence. A licensee's failure to submit fingerprints to the Department of Justice, or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency, an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The fingerprints shall then be submitted to the State Department of Social Services for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(3) Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster home licensee or the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services.

(4) The application shall be denied if it is determined by the approving authority, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, or has been convicted of an offense specified in Section 220, 243.4, 264.1, subdivision (a) of Section 273a, or prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was convicted of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(e) The State Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client.

(f) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the State Department of Social Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit pursuant to subdivision (a), or for a license, special permit, or

certificate of approval pursuant to subdivision (d), or for employment, residence, or presence in a community care facility as specified in subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, 264.1, subdivision (a) of Section 273a, or prior to January 1, 1994, paragraph (1) of subdivision (a) of Section 273a, Sections 273d, 288, 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director may grant an exemption if the employee or prospective employee, who was convicted of a crime against an individual in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, has been rehabilitated as provided in Section 4852.03 of the Penal Code and has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1558.

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office. The request shall be in writing to the department, and shall include a copy of the person's California driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope, the State Department of Social Services shall verify if the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(i) The full criminal record obtained for purposes of this section may be used by the department or by a licensed adoption agency as a clearance required for adoption purposes.

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(k) (1) The Department of Justice shall coordinate with the State Department of Social Services to establish and implement an automated live-scan processing system for fingerprints in the district offices of the Community Care Licensing Division of the State Department of Social Services by July 1, 1998.

These live-scan processing units shall be connected to the main system at the Department of Justice by July 1, 1999, and shall become part of that department's pilot project in accordance with its long-range plan. The State Department of Social Services may charge a fee not to exceed five dollars ($5) or the actual cost of processing a set of live-scan fingerprints.

(2) The Department of Justice shall provide a report to the Senate and Assembly fiscal committees and the Assembly Human Services Committee and to the Senate Health and Human Services Committee by February 15, 1998, regarding the completion of backlogged criminal record clearance requests for all facilities licensed by the State Department of Social Services and the progress on implementing the automated live-scan processing system in the district offices pursuant to paragraph (1).

SEC. 4. Section 1522.03 of the Health and Safety Code is amended to read:

1522.03. It is the intent of the Legislature that the Department of Justice charge a fee sufficient to cover its cost in providing services in accordance with Section 1522 to comply with the six business day requirement for provision to the department of the criminal record information, as contained in subdivision (c) of Section 1522.

SEC. 5. Section 1522.04 is added to the Health and Safety Code, to read:

1522.04. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a community care facility, or the other residential care facility, child day care facility, or foster family agency, licensed by the department pursuant to this chapter, Chapter 3.01 (commencing with Section 1568.01), Chapter 3.2 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30),

or certified family home. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice, for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII) to be used for applicant fingerprints. It is the intent of the Legislature that when live-scan technology is operational in the district offices of the Community Care Licensing Division of the State Department of Social Services which serve the facility, that individuals obtain a criminal record clearance or exemption before their initial presence in a community care facility.

SEC. 6. Section 1568.09 of the Health and Safety Code is amended to read:

1568.09. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with residents of residential care facilities for persons with a chronic, life-threatening illness may pose a risk to the residents' health and safety.

(a) Before issuing a license to any person or persons to operate or manage a residential care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code or arrested for violating Section 245, 273.5, paragraph (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a, of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons. If it is found that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the Department of Justice shall notify the State Department of Social Services of that fact and the application shall be denied, unless the director grants an exemption pursuant to subdivision (f). If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(b) In addition to the applicant, the provisions of this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff of the facility.

(2) Any person, other than a resident, residing in the facility.

(3) Any person who provides resident assistance in dressing, grooming, bathing, or personal hygiene.

(4) Any staff person, volunteer, or employee who has contact with the residents. A volunteer shall be exempt from the requirements in subdivision (b) if the volunteer is a relative, significant other, or close

friend of a client in care at the facility and does not provide direct care and supervision of residents. A volunteer who provides direct care and supervision shall be exempt if the volunteer is a resident's spouse, significant other, close friend or family member and provides direct care and supervision to that resident only at the request of the resident.

(5) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in that capacity.

(6) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a residential care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice, or comply with paragraph (1) of subdivision (g), prior to the person's employment, residence, or initial presence in the residential care facility.

(2) These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints and submitted to the Department of Justice by the licensee. A licensee's failure to submit fingerprints to the Department of Justice, or to comply with paragraph (1) of subdivision (g), as required in this section, shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The fingerprints shall then be submitted to the State Department of Social Services for processing. The licensee shall maintain a copy of the individual's clearance or exemption at the facility.

(3) Within six business days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services 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 licensee and the State Department of Social Services with a statement of that fact within six business days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within six business days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

(4) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under

this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the department shall notify the licensee to act immediately to terminate the person's employment, remove the person from the residential care facility, or bar the person from entering the residential care facility. The department may subsequently grant an exemption pursuant to subdivision (e). If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the department, act immediately to either (1) terminate the persons' employment, remove the person from the residential care facility, or bar the person from entering the residential care facility; or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered.

(5) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(6) Concurrently with notifying the licensee pursuant to paragraph (4), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (4).

(d) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of the sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting that 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, information, or indictment. For purposes of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in

a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(e) The State Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license pursuant to subdivision (a), or for employment, residence, or presence in a residential care facility as specified in subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, 264.1, paragraph (a) of Section 273a, or prior to January 1, 1994, or paragraph (1) of Section 273a or Section 273d, or Section 288 or 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1568.092.

(g) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office. The request shall be in writing to the department and include a copy of the person's California driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope, the State Department of Social Services shall verify if the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal records clearances in its active files for a minimum of two years after

an employee is no longer employed at a licensed facility in order for the criminal records clearance to be transferred.

(h) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1568.092, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(i) The Department of Justice shall charge a fee sufficient to cover its cost in providing services in accordance with this section to comply with the six business day requirement for provision to the department of the criminal record information, as contained in subdivision (c).

SEC. 7. Section 1569.17 of the Health and Safety Code is amended to read:

1569.17. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a residential care facility for the elderly. The Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with clients of residential care facilities for the elderly may pose a risk to the clients' health and safety, and that when live-scan technology is operational in the district office of the Community Care Licensing Division of the State Department of Social Services which serves the facility, that individuals obtain a criminal record clearance or exemption before their initial presence in a community care facility.

(a) Before issuing a license to any person or persons to operate or manage a residential care facility for the elderly, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation, or arrested for any crime specified in Section 290 of the Penal Code, or arrested for violating Section 245, 273.5, subdivision (b) of Section 273a, or prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has been exonerated. That criminal history information shall include the full criminal record, if any, of those persons. If it is found that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the Department of Justice shall notify the State Department of Social Services of that fact and the application shall

be denied, unless the director grants an exemption pursuant to subdivision (f). If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(b) In addition to the applicant, the provisions of this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff.

(2) Any person, other than a client, residing in the facility.

(3) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene.

(4) Any staff person, volunteer, or employee who has frequent and routine contact with the clients. A volunteer shall be exempt from the requirements in subdivision (b) if the volunteer is a relative, significant other, or close friend of a client in care at the facility and is not used to replace or supplement staff in providing direct care and supervision of clients.

(5) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(6) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a residential facility for the elderly, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice, or comply with paragraph (1) of subdivision (g), prior to the person's employment, residence, or initial presence in the residential care facility for the elderly.

(2) These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints and submitted to the Department of Justice by the licensee. A licensee's failure to submit fingerprints to the Department of Justice, or comply with paragraph (1) of subdivision (g), as required in this section, shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The fingerprints shall then be submitted to the State Department of Social Services for processing. The licensee shall maintain a copy of the individual's clearance or exemption at the facility.

(3) Within six business days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social

Services 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 licensee and the State Department of Social Services with a statement of that fact within six business days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within six business days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

(4) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the State Department of Social Services shall notify the licensee in writing within 15 calendar days of the receipt of the notification from the Department of Justice to act immediately to terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly; or (2) seek an exemption pursuant to subdivision (e). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered by the department.

(5) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(6) Concurrently with notifying the licensee pursuant to paragraph (4), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (4).

(d) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction

following a plea of nolo contendere. Any action that the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of the sentence, notwithstanding a subsequent order pursuant to the provisions of Sections 1203.4 and 1203.4a of the Penal Code permitting a person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice or documents admissible in a criminal action pursuant to Section 969b of the Penal Code shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(e) The State Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license pursuant to subdivision (a), or for employment, residence, or presence in a residential care facility for the elderly as specified in subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, 264.1, subdivision (a) of Section 273a, or prior to January 1, 1994, paragraph (1) of subdivision (a) of Section 273a or Section 273d, or Section 288 or 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director shall notify in writing the licensee or the applicant of his or her decision within 60 days of receipt of all information from the applicant and other sources determined necessary by the director for the rendering of a decision pursuant to this subdivision.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of

a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1569.58.

(g) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office. The request shall be in writing to the department and include a copy of the person's California driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope, the State Department of Social Services shall verify if the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal records clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal records clearances to be transferred under this section.

(h) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1569.58, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

SEC. 8. Section 1569.172 of the Health and Safety Code is amended to read:

1569.172. It is the intent of the Legislature that the Department of Justice charge a fee sufficient to cover its cost in providing services in accordance with Section 1569.17 to comply with the six business day requirement for provision to the department of the criminal record information, as contained in subdivision (c) of Section 1569.17.

SEC. 9. Section 1596.871 of the Health and Safety Code is amended to read:

1596.871. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a community care facility, foster family home, or a certified family home. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII) to be used for applicant fingerprints. It is the intent of the Legislature that

when live-scan technology is operational that individuals obtain a criminal record clearance or exemption before their initial presence in a community care facility. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with child day care facility clients may pose a risk to the children's health and safety.

(a) Before issuing a license or special permit to any person to operate or manage a day care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation, or arrested for any crime specified in Section 290 of the Penal Code or arrested for violating Section 245, 273.5, subdivision (b) of Section 273a, or prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons. No fee shall be charged by the Department of Justice or the department for the fingerprinting of an applicant who will serve six or fewer children or any family day care applicant for a license, or for obtaining a criminal record of an applicant pursuant to this section. If it is found that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the Department of Justice shall notify the State Department of Social Services of that fact and the application shall be denied, unless the director grants an exemption pursuant to subdivision (f). If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(b) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff.

(2) Any person, other than a child, residing in the facility.

(3) Any person who provides care and supervision to the children.

(4) Any staff person, volunteer, or employee who has contact with the children. A volunteer shall be exempt from the requirements in subdivision (b) if the volunteer is a relative of a client in care at the facility and is not used to replace or supplement staff in providing direct care and supervision of children in care.

(5) If the applicant is a firm, partnership, association, or corporation, the chief executive officer, other person serving in like capacity, or a person designated by the chief executive officer as responsible for the operation of the facility, as designated by the applicant agency.

(6) If the applicant is a local educational agency, the president of the governing board, the school district superintendent, or a person

designated to administer the operation of the facility, as designated by the local educational agency.

(7) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(8) This section does not apply to employees of child care and development programs under contract with the State Department of Education who have completed a criminal records clearance as part of an application to the Commission on Teacher Credentialing, and who possess a current credential or permit issued by the commission, including employees of child care and development programs that serve both children subsidized under, and children not subsidized under, a State Department of Education contract. The Commission on Teacher Credentialing shall notify the department upon revocation of a current credential or permit issued to an employee of a child care and development program under contract with the State Department of Education.

(9) This section does not apply to employees of a child care and development program operated by a school district, county office of education, or community college district under contract with the State Department of Education who have completed a criminal records clearance as a condition of employment. The school district, county office of education, or community college district upon receiving information that the status of an employee's criminal record clearance has changed shall submit that information to the department.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a child day care facility be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal conviction. The licensee shall submit these fingerprints to the Department of Justice, or comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the child day care facility.

(2) These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints and submitted to the Department of Justice by the licensee. A licensee's failure to submit fingerprints to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency, and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The fingerprints shall then be submitted to the State Department of Social Services for processing. Within six business days of the receipt of the fingerprints,

the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within six business days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within six business days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible. The licensee shall maintain a copy of the individual's clearance or exemption at the facility.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the department, on the basis of fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, or has been convicted of an offense specified in Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility. The department may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility; or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered.

(4) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the

department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(e) The State Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit pursuant to subdivision (a), or for employment, residence, or presence in a child day care facility as specified in subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character so as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a, or subdivision (a) of Section 290, or prior to January 1, 1994, paragraph (1) of Section 273a or 273d, or Section 288, 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1596.8897.

(g) Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(h) (1) For the purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office. The request shall be in writing to the department and include a copy of the person's California driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope, the State Department of Social Services shall verify if the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal records clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal records clearances to be transferred.

SEC. 10. Section 1596.8713 of the Health and Safety Code is amended to read:

1596.8713. It is the intent of the Legislature that the Department of Justice charge a fee sufficient to cover its costs in providing services in accordance with Section 1596.871 to comply with the six business day requirement for provision to the department of the criminal record information, as contained in subdivision (c) of Section 1569.871.

SEC. 11. Section 1597.59 of the Health and Safety Code is amended to read:

1597.59. The department and the local agencies with which it contracts for the licensing of family day care homes for children shall grant or deny a license to a family day care home for children within 30 days after receipt of all appropriate licensing application materials as determined by the department, provided both of the following conditions are met:

(a) A site visit has been completed and the family day care home has been found to be in compliance with licensing standards.

(b) The applicant and each person described by subdivision (b) of Section 1596.871 has obtained a criminal record clearance, or been granted a criminal record exemption by the department or the local contracting agency.

The department shall conduct an initial site visit within 30 days after the receipt of all appropriate licensing application materials.

SEC. 12. Section 11166.95 is added to the Penal Code, to read:

11166.95. The State Department of Social Services shall work with state and local child death review teams and child protective services

agencies in order to identify child death cases that were, or should have been, reported to or by county child protective services agencies. Findings made pursuant to this section shall be used to determine the extent of child abuse fatalities occurring in families known to child protective services agencies and to define child welfare training needs for reporting, cross-reporting, data integration, and involvement by child protective services agencies in multiagency review in child deaths. The State Department of Social Services, the State Department of Health Services, and Department of Justice shall develop a plan to track and maintain data on child deaths from abuse and neglect, and submit this plan, not later than December 1, 1997, to the Senate Committee on Health and Human Services, the Assembly Committee on Human Services, and the chairs of the fiscal committees of the Legislature.

SEC. 13. Section 1088.5 of the Unemployment Insurance Code is amended to read:

1088.5. (a) In addition to information reported in accordance with Section 1088, each employer shall file with the department the information provided in subdivision (b) on new employees.

(b) Each employer shall report all of the following information to the department:

(1) The hiring of any person who resides or works in this state to whom the employer anticipates paying earnings.

(2) The rehiring or return to work of any person who has been laid off, furloughed, separated, granted a leave without pay, or terminated from employment, and to whom the employer anticipates paying wages.

(c) Employers shall not be required to report on any of the following persons:

(1) Any person whom the employer pays wages of less than three hundred dollars ($300) each month.

(2) Any person who is under 18 years of age.

(d) (1) The department and the State Department of Social Services, jointly, shall adopt rules and regulations to establish exemptions in addition to those provided in subdivision (c), if the department and the State Department of Social Services determine the exemptions are needed to reduce unnecessary or burdensome reporting or are needed to facilitate cost-effective operation of this section.

(2) The department and the State Department of Social Services shall adopt regulations required pursuant to paragraph (1) by April 1, 1993.

(e) (1) Employers shall submit a report within 30 days of the hiring, rehiring, or return to work of any person on whom the employer is required to report pursuant to this section.

(2) The report shall contain all of the following:

(A) The first initial and last name and social security number of the person.

(B) The employer's name, address, and state employer identification number.

(3) The report required by Section 1088 shall not be accepted in lieu of the report required by this section.

(f) Employers may report pursuant to this section, by submitting a copy of the employee's W-4 form, a form provided by the department, or any other hiring document, by mail or telefaxing or by any other means that is authorized by the department and that will result in timely reporting.

(g) The department shall retain information collected pursuant to this section for no more than 180 days after the end of the calendar quarter, except for purposes of enforcement of subdivision (i).

(h) The department may use the information collected pursuant to this section only for the following purposes:

(1) The administration and enforcement of this section.

(2) The identification, prevention, and collection of benefit overpayments pursuant to any of the following provisions:

(A) Article 4 (commencing with Section 1375) of Chapter 5.

(B) Article 5 (commencing with Section 2735) of Chapter 2 of Part 2.

(C) Section 3751.

(D) Section 4751.

(3) The location of noncustodial parents or the income of noncustodial parents.

(4) The identification of errors in employer reports of wages filed pursuant to Section 1088.

(5) The verification of employment of applicants for, and recipients of, services under the Aid to Families with Dependent Children program or its successor program or the Food Stamp Program, provided for pursuant to Chapter 10 (commencing with Section 18900) of Part 6 of Division 9 of the Welfare and Institutions Code.

(6) Providing employer or employee information to the Franchise Tax Board, upon the request of that board, for the purpose of tax enforcement.

(7) The identification and collection of delinquent liabilities under this code.

(8) To assist the department in determining the effectiveness of its job placement services.

(i) Information obtained by the department pursuant to subdivision (b) may be released to the Franchise Tax Board for tax enforcement purposes.

(j) The department shall provide a written notice to any employer for the employer's first failure to report any new hire, rehire, or return to work of an employee. For each subsequent failure to report as required by this section that occurs after the date the employer receives notice from the department of his or her first failure to

report, unless the failure is due to good cause, the employer shall be subject to a penalty of two hundred fifty dollars ($250).

(k) The department shall not enforce the employer reporting requirements of this section until April 1, 1993, or when regulations are adopted pursuant to subdivision (d), whichever is sooner.

(*l*) For purposes of this section, "wages" means the same as defined in Section 926.

(m) This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 14. Section 1088.5 is added to the Unemployment Insurance Code, to read:

1088.5. (a) In addition to information reported in accordance with Section 1088, effective July 1, 1998, each employer shall file, with the department, the information provided for in subdivision (b) on new employees.

(b) Each employer shall report the hiring of any employee who works in this state and to whom the employer anticipates paying wages.

(c) (1) This section shall not apply to any department, agency, or instrumentality of the United States.

(2) State agency employers shall not be required to report employees performing intelligence or counterintelligence functions, if the head of the agency has determined that reporting pursuant to this section would endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(d) (1) Employers shall submit a report as described in paragraph (4) within 20 days of hiring any employee whom the employer is required to report pursuant to this section.

(2) Notwithstanding subdivision (a), employers transmitting reports magnetically or electronically shall submit the report by two monthly transmissions not less than 12 days no more than 16 days apart.

(3) For purposes of this section, an employer that has employees in two or more states and that transmits reports magnetically or electronically may designate one state in which the employer has employees to which the employer will transmit the report described in paragraph (4). Any employer that transmits reports pursuant to this paragraph shall notify the Secretary of Health and Human Services in writing as to which state the employer designates for the purpose of sending reports.

(4) The report shall contain the following:

(A) The name, address, and social security number of the employees.

(B) The employer's name, address, state employer identification number (if one has been issued), and identifying number assigned

to the employer under Section 6109 of the Internal Revenue Code of 1986.

(C) The first date the employee worked.

(5) Employers may report pursuant to this section by submitting a copy of the employee's W-4 form, a form provided by the department, or any other hiring document transmitted by first-class mail, magnetically, or electronically.

(e) For each failure to report the hiring of an employee, as required and within the time required by this section, unless the failure is due to good cause, the department may assess a penalty of twenty-four dollars ($24), or four hundred ninety dollars ($490) if the failure is the result of conspiracy between the employer and employee not to supply the required report or to supply a false or incomplete report.

(f) Information collected pursuant to this section may be used for the following purposes:

(1) Administration of this code.

(2) Locating individuals for purposes of establishing paternity and establishing, modifying, and enforcing child support obligations.

(3) Administration of employment security and workers' compensation programs.

(4) Providing employer or employee information to the Franchise Tax Board for the purpose of tax enforcement.

(5) Verification of eligibility of applicants for, or recipients of, the public assistance programs listed in Section 1320b-7(b) of Title 42 of the United States Code.

(g) This section shall become operative on July 1, 1998.

SEC. 15. Section 9616.1 is added to the Unemployment Insurance Code, to read:

9616.1. (a) The department shall convene groups that represent local department field offices, county welfare departments, service delivery areas, and community colleges for the purpose of developing a local plan on how these entities will regularly coordinate employer outreach activities and the solicitation of entry-level and other job listings, in order to reduce duplication of effort and to enhance the overall job development activities in each county. Each local plan shall be signed by the local entities convened pursuant to this subdivision and submitted to the department.

(b) The department shall submit a report to the Legislature on the local plans developed pursuant to subdivision (a) within 90 days from the effective date of this act.

(c) The entities involved in formulating each local plan and the department shall review each plan on at least an annual basis.

SEC. 16. Section 9616.5 is added to the Unemployment Insurance Code, to read:

9616.5. The department shall submit a report to the Legislature, by March 31, 1998, on the effectiveness of the performance of the Employment Services Program in the area of job identification and

job listings. The report shall include data on the number of jobs listed, the number of job seekers using the system, including the number of CalWORKs recipients using the system, and the number of employers listing jobs in the system.

SEC. 17. Section 10206 of the Unemployment Insurance Code is amended to read:

10206. (a) The panel may allocate money in the fund for any of the following purposes:

(1) Reimbursement of reasonable training costs, and administrative costs incurred by contractors. In making a determination of costs to be reimbursed under this paragraph, the panel may allocate funds in accordance with any of the following methods:

(A) For purposes of providing simplified fixed-fee performance contracts, a flat rate per hour for categories of training that are substantially similar with respect to content, methodology, and duration, as determined by the panel, not to exceed the reasonable and normal costs for the training. The panel shall periodically adjust the standardized rates established pursuant to this paragraph to reflect changes in training costs.

(B) A complete review of the proposal and its costs, including a budget listing the planned costs of training, including personnel, fringe benefits, equipment, supplies, fees for consulting or administrative services, and other costs attributable to training; the services provided by subcontractors; the length and complexity of the training; the method of training; the wages and occupations following training; whether the trainees are new hires or retrainees; and the cost of similar training that the panel has funded previously. The cost of administration shall not exceed 15 percent of the training costs under this paragraph, except that for new hire training the panel may fund administrative costs of up to 25 percent of the training cost.

(C) The panel may modify the specific requirements of this paragraph as they apply to employers or contractors proposing projects that involve training for a significant number of small employers in the same project.

(D) A contractor is prohibited from utilizing any funds earned or paid as advances or progress payments for the purpose of making payments to any other individual or entity, either directly or indirectly, for costs incurred as a finder's fee or for other compensation related to the predevelopment or development phase of a training program, which is based on a percentage of the preliminary or final panel award to the contractor for the training project.

(2) (A) Costs of program administration incurred under this chapter. These costs shall be reviewed annually by the Department of Finance and the Legislature and determined through the normal budgetary process.

The panel's administrative costs for the 1997–98 fiscal year, exclusive of the cost of administering Section 976.6, shall not exceed 15 percent of the amount annually appropriated for expenditure by the panel.

(B) For purposes of calculating the amount available for the panel's administrative costs pursuant to subparagraph (A), the base amount shall not include funds disencumbered from Employment Training Fund job-training contracts.

(C) Expenditures for marketing, research, and evaluations provided under the contract to the panel under paragraph (1) that otherwise would have been provided directly by the panel shall not be included in this limitation.

(3) Service related to the purposes of this chapter provided by the Small Business Development Centers pursuant to an interagency agreement with the Trade and Commerce Agency.

(b) For all training contracts, the panel shall establish requirements for in-kind contributions by either the contractor or the employer that reflect a substantial commitment on the part of the contractor or the employer to the value of the training. In developing these requirements, the panel shall take into account the ability of the contractor or the employer, because of size or financial condition, to make any contribution, and the ability of the Employment Training Fund to meet the demand for training authorized by this chapter. Contributions shall be evaluated against plans required in subparagraph (A) of paragraph (2) of subdivision (b) of Section 10201 to sustain a commitment to workplace training after the contract ends. In developing policies regarding in-kind contributions, the panel shall hold public hearings.

(c) In order to encourage successful new hire training, the panel shall develop a new hire cost reimbursement system. The new hire cost reimbursement system shall recognize the additional risk attendant to new hire training if the contractor successfully meets at least 60 percent of the training and placement goals of a new hire contract. The reimbursement system authorized by this subdivision shall discourage excessive overenrollment at the beginning of the contract, and shall not provide reimbursements if the training and placement goals are achieved primarily through modification of the original contract. The new hire cost reimbursement system provided for in this subdivision shall remain in effect only until December 31, 1995.

SEC. 18. Section 10069.5 is added to Chapter 3 (commencing with Section 10065) of Part 1 of Division 9 of the Welfare and Institutions Code, as added by Assembly Bill 1542 at the 1997 portion of the 1997–98 Regular Session, to read:

10069.5. Notwithstanding any other provision of this chapter, the project management for a statewide electronic benefits transfer system shall be transferred from the department to the Health and Welfare Agency Data Center.

SEC. 19. Section 10101 of the Welfare and Institutions Code is amended to read:

10101. (a) For the 1991–92 fiscal year and each fiscal year thereafter, the state's share of the costs of the child welfare program shall be 70 percent of the actual nonfederal expenditures for the program or the amount appropriated by the Legislature for that purpose, whichever is less.

(b) Federal funds received under Title 20 of the federal Social Security Act (42 U.S.C. Sec. 1397 et seq.) and appropriated by the Legislature for child welfare services shall be considered part of the state share of cost and not part of the federal expenditures for this program.

(c) Notwithstanding subdivision (a), the amount of funds appropriated from the General Fund in the annual Budget Act that equates to the amount claimed under the Emergency Assistance Program that has been included in the state's Temporary Assistance for Needy Families block grant for child welfare services shall be considered federal funds for the purposes of calculating the county's share of cost, provided the expenditure of these funds contributes to the state meeting its federal maintenance of effort requirements.

SEC. 20. Section 10823 is added to the Welfare and Institutions Code, to read:

10823. (a) (1) The Health and Welfare Agency Data Center shall implement a statewide automated welfare system for the following public assistance programs:

(A) The CalWORKs program.

(B) The Food Stamp Program.

(C) The Medi-Cal Program.

(D) The foster care program.

(E) The refugee program.

(F) County medical services programs.

(2) Statewide implementation of the statewide automated welfare system for the programs listed in paragraph (1) shall be achieved through no more than four county consortia, including the Interim Statewide Automated Welfare System Consortium, and the Los Angeles Eligibility, Automated Determination, Evaluation, and Reporting System.

(b) Nothing in subdivision (a) transfers program policy responsibilities related to the public assistance programs specified in subdivision (a) from the State Department of Social Services or the State Department of Health Services to the Health and Welfare Agency Data Center.

(c) Beginning February 1, 1998, and on February 1 of each year thereafter, the Health and Welfare Agency Data Center shall provide an annual report to the appropriate committees of the Legislature on the statewide automated welfare system implemented under this section. The report shall address the progress of state and consortia

activities and any significant schedule, budget, or functionality changes in the project.

SEC. 21. Section 10823.5 is added to the Welfare and Institutions Code, to read:

10823.5. The State Department of Social Services shall pay the county share of Merced County's Merced Automated Global Information Control (MAGIC) application maintenance costs until September 30, 1998, or until Merced County has converted its caseload to one of the Statewide Automated Welfare System (SAWS) consortia systems, whichever occurs first. Merced County shall be the first county implemented under the SAWS consortium system approved for Merced County. Beginning October 1, 1998, Merced County shall pay the county share of MAGIC application maintenance costs based on its percentage share of the total caseload for the consortium approved for Merced County on October 1, 1998. The caseload percentage share shall be adjusted each fiscal year to reflect changes in caseload throughout the consortium. Caseload for the purposes of this section shall be defined as actual average annual duplicated case counts for the most current full fiscal year for the programs included in the consortia system. Beginning October 1, 1998, and until Merced County has converted its caseload to the SAWS consortium approved for Merced County, the department shall pay the difference between the total county share of MAGIC application maintenance costs and the Merced County caseload percentage share of MAGIC application costs.

SEC. 22. Section 10824 of the Welfare and Institutions Code is amended to read:

10824. (a) The counties not participating in the Interim Statewide Automated Welfare System Consortium or the Los Angeles Eligibility, Automated Determination, Evaluation, and Reporting Consortium shall collectively pay 5 percent of the total application development costs of the Statewide Automated Welfare System consortium to which they belong. The proportion of the 5 percent of total application development costs paid by a participating county shall be the same proportion that the county's caseload bears to the total consortium caseload for the fiscal year in which the contract for application development is executed. "Caseload" for purposes of this section, means the actual average annual duplicated case counts for the programs included in each consortia's application. A county subject to this section may pay its proportion of application development costs during development of its consortium's system, or, by agreement with the department, may pay its proportion after its consortium's system in production, but within four years after the start of production in a county.

(b) The department shall pay the county share of all other Statewide Automated Welfare System development and implementation costs approved by the Department of Finance and the federal funding agencies for the counties participating in each

consortium, except the Los Angeles Eligibility, Automated Determination, Evaluation, and Reporting Consortium.

(c) The department shall pay the county share of maintenance and operations costs for the first 12 months of production of the Statewide Automated Welfare System for the counties participating in each consortium, except the Los Angeles Eligibility, Automated Determination, Evaluation, and Reporting Consortium.

(d) For purposes of this section, "production" means the first conversion of a county case to the Statewide Automated Welfare System application used by the county's consortium, or the first processing of an intake case using the county's Statewide Automated Welfare System consortium application, whichever occurs first.

(e) The department shall pay all Statewide Automated Welfare System maintenance and operations costs for specified counties as defined in this subdivision. A county qualified for Statewide Automated Welfare System maintenance and operations funding is defined as one having an average monthly, duplicated continuing case count below 3,700 cases for the CalWORKs, nonassistance food stamp, public assistance food stamps, Medi-Cal, foster care, refugee, and county medical services programs. The department shall make its determination based on actual case counts for the most current full fiscal year. The department shall provide funding for the county share-of-costs for those counties that annually meet this definition until June 30, 2001.

(f) Beginning October 1, 1998, the original 14 Interim Statewide Automated System counties shall pay the county share of Statewide Automated Welfare System maintenance and operations costs at the county administrative cost sharing ratios otherwise provided by law. Counties described in subdivision (e) shall not be subject to this requirement.

(g) The department shall pay the county share of Napa County's Interim Statewide Automated Welfare System's application maintenance costs through September 30, 1998. Beginning October 1, 1998, Napa County shall pay the county share of the Interim Statewide Welfare System application maintenance costs at the county administrative cost sharing ratios otherwise provided by law.

(h) (1) The county shall secure the prior approval of the department for any use of Statewide Automated Welfare System equipment, software or resources for activities and program administration not eligible for federal financial participation.

(2) The county shall allocate Statewide Automated Welfare System costs to the respective programs eligible for federal financial participation in accordance with the cost allocation requirements of each program.

(3) The county shall allocate as Statewide Automated Welfare System costs only for activities and program administration eligible for federal financial participation.

(i) If a county uses Statewide Automated Welfare System equipment, software, or resources for activities and program administration not eligible for federal financial participation, and fails to comply with provisions specified in subdivision (h), the county shall be liable to the department for any disallowance due to that use by the county of Statewide Automated Welfare System equipment, software, or resources. In the event of such a loss, the department may recover the loss by reducing funds otherwise due the county as state participation in programs administered by the county under the supervision of the department.

(j) The department shall fund each county's share of the Central Data Base for the Medi-Cal Eligibility Data System until the end of the 12th month after Statewide Automated Welfare System production begins, as defined in subdivision (d).

SEC. 23. Section 11280 of the Welfare and Institutions Code is repealed.

SEC. 24. Section 11462 of the Welfare and Institutions Code is amended to read:

11462. (a) (1) Effective July 1, 1990, foster care providers licensed as group homes, as defined in departmental regulations, including public child care institutions, as defined in Section 11402.5, shall have rates established by classifying each group home program and applying the standardized schedule of rates. The department shall collect information from group providers beginning January 1, 1990, in order to classify each group home program.

(2) Notwithstanding paragraph (1), foster care providers licensed as group homes shall have rates established only if the group home is organized and operated on a nonprofit basis as required under subdivision (h) of Section 11400. The department shall terminate the rate effective January 1, 1993, of any group home not organized and operated on a nonprofit basis as required under subdivision (h) of Section 11400.

(b) A group home program shall be initially classified, for purposes of emergency regulations, according to the level of care and services to be provided using a point system developed by the department and described in the report, "The Classification of Group Home Programs under the Standardized Schedule of Rates System," prepared by the State Department of Social Services, August 30, 1989.

(c) The rate for each rate classification level (RCL) has been determined by the department with data from the AFDC-FC Group Home Rate Classification Pilot Study. The rates effective July 1, 1990, were developed using 1985 calendar year costs and reflect adjustments to the costs for each fiscal year, starting with the 1986–87 fiscal year, by the amount of the California Necessities Index computed pursuant to the methodology described in Section 11453. The data obtained by the department using 1985 calendar year costs shall be updated and revised by January 1, 1993.

(d) As used in this section, "standardized schedule of rates" means a listing of the 14 rate classification levels, the single rate established for each RCL, and the rate floor for each RCL.

(e) The standardized schedule of rates shall be phased in commencing July 1, 1990.

(1) In order to phase in the standardized schedule of rates, a "rate floor" has been established for each RCL.

(2) The rate floor for fiscal year 1990–91 shall be 85 percent of the standard rate for each RCL. The rate floor shall be increased to 92.5 percent of the standard rate for fiscal year 1991–92 for each RCL, shall be equal to the standard rate for each RCL for the period July 1, 1992, to September 13, 1992, inclusive, and shall be 92.5 percent of the standard rate for each RCL for the period September 14, 1992, to June 30, 1993, inclusive.

(3) The rate floor for each RCL shall be 95 percent of the standard rate for each RCL for the 1993–94 fiscal year. The rate floor shall be equal to the standard rate for each RCL for the 1994–95 fiscal year and beyond.

(f) Except as specified in paragraph (1), the department shall determine the RCL for each group home program on a prospective basis, according to the level of care and services that the group home operator projects will be provided during the period of time for which the rate is being established.

(1) For a group home program for which the department established a rate effective prior to June 30, 1990, that took into account the program's historical costs, the department shall establish the rate for fiscal year 1990–91 by determining the RCL on a retrospective basis, according to the level of care and services actually provided between July 1 and December 31, 1989, or between July 1, 1989, and March 31, 1990.

(2) Group home programs that fail to maintain at least the level of care and services associated with the RCL upon which their rate was established shall inform the department. The department shall develop regulations specifying procedures to be applied when a group home fails to maintain the level of services projected, including, but not limited to, rate reduction and recovery of overpayments.

(3) The department shall not reduce the rate, establish an overpayment, or take other actions pursuant to paragraph (2) for any period that a group home program maintains the level of care and services associated with the RCL for children actually residing in the facility. Determinations of levels of care and services shall be made in the same way as modifications of overpayments are made pursuant to paragraph (2) of subdivision (b) of Section 11466.2.

(4) Beginning July 1, 1994, for group homes paid at rates below the standard rate established by subdivision (g), a group home program shall remain at its current RCL if it maintains at least the level of care and services associated with that percentage of the points required

to be at that RCL that equals the percentage of the standard rate used to establish the group home's rate. In no event, however, shall points per child per month be reduced more than 10 points below the minimum required for the current RCL. The RCL for a program shall not increase due to the operation of this paragraph absent any program changes approved by the department pursuant to subdivision (k).

(5) A group home program that substantially changes it staffing pattern from that reported in the group home program statement shall provide notification of this change to all counties that have placed children currently in care. This notification shall be provided whether or not the RCL for the program may change as a result of the change in staffing pattern.

(g) The standardized schedule of rates for fiscal year 1990–91 is:

Rate Classification Level	Point Ranges	FY 1990–91 Standard Rate	FY 1990–91 Rate Floor (85%)
1	Under 60	$1,183	$1,006
2	60–89	1,478	1,256
3	90–119	1,773	1,507
4	120–149	2,067	1,757
5	150–179	2,360	2,006
6	180–209	2,656	2,258
7	210–239	2,950	2,508
8	240–269	3,245	2,758
9	270–299	3,539	3,008
10	300–329	3,834	3,259
11	330–359	4,127	3,508
12	360–389	4,423	3,760
13	390–419	4,720	4,012
14	420 & Up	5,013	4,261

(h) (1) For fiscal year 1990–91, the standardized schedule of rates shall be implemented as follows:

(A) Any group home program which received an AFDC-FC rate in the prior fiscal year below the standard rate for the fiscal year 1990–91 RCL shall receive their 1989–90 rate plus an amount equal to the California Necessities Index (CNI). The rate for fiscal year 1990–91 at which the state will participate shall not exceed the standard rate for the RCL.

(B) If the CNI increase to the group home program's fiscal year 1989–90 rate does not raise the group home program to the rate floor

for the RCL, the group home program shall receive a rate equal to the rate floor for the RCL.

(C) A group home program which received an AFDC-FC rate for fiscal year 1989–90 at or above the standard rate for the RCL for fiscal year 1990–91 shall continue to receive that fiscal year 1989–90 rate.

(2) For that portion of the 1998–99 fiscal year, commencing on November 1, 1998, and the 1999–2000 fiscal year, the standardized rate for each RCL shall be adjusted by an amount equal to the California Necessities Index computed pursuant to the methodology described in Section 11453.

(A) Any group home program which received an AFDC-FC rate in the prior fiscal year at or above the adjusted standard rate for the RCL in the current fiscal year shall continue to receive that rate.

(B) A group home program which received an AFDC-FC rate in the prior fiscal year below the standard rate for the RCL in the current fiscal year shall receive that rate adjusted by an amount equal to the CNI. The rate for the current fiscal year shall not exceed the standard rate for the RCL and shall not be less than the rate floor for the RCL.

(3) Beginning with the 2000–01 fiscal year. the standardized schedule of rates shall be adjusted annually by an amount equal to the CNI computed pursuant to Section 11453, subject to the availability of funds.

(A) Any group home program which received an AFDC-FC rate in the prior fiscal year at or above the adjusted standard rate for the RCL in the current fiscal year shall continue to receive that rate.

(B) Any group home program which received an AFDC-FC rate in the prior fiscal year below the adjusted standard rate for the RCL in the current fiscal year shall receive the adjusted RCL rate.

(i) (1) (A) The rate for a new group home program of a new or existing provider shall be established at the rate floor for the new program's projected RCL.

(B) On and after the operative date of this subparagraph, the department shall not, prior to July 1, 1993, establish a rate for a new group home program of a new or existing provider.

(2) The department shall not establish a rate for a new program of a new or existing provider unless the provider submits a recommendation from the host county, the primary placing county, or a regional consortium of counties that the program is needed in that county; that the provider is capable of effectively and efficiently operating the program; and that the provider is willing and able to accept AFDC-FC children for placement who are determined by the placing agency to need the level of care and services that will be provided by the program.

(3) The department shall encourage the establishment of consortia of county placing agencies on a regional basis for the purpose of making decisions and recommendations about the need

for, and use of, group home programs and other foster care providers within the regions.

(4) The department shall annually conduct a county-by-county survey to determine the unmet placement needs of children placed pursuant to Sections 300 and Section 601 or 602, and shall publish its findings by November 1 of each year.

(j) The department shall develop regulations specifying ratesetting procedures for program expansions, reductions, or modifications, including increases or decreases in licensed capacity, or increases or decreases in level of care or services.

(k) (1) For the purpose of this subdivision, "program change" means any alteration to an existing group home program planned by a provider that will increase the RCL or AFDC-FC rate. An increase in the licensed capacity or other alteration to an existing group home program that does not increase the RCL or AFDC-FC rate shall not constitute a program change.

(2) (A) Prior to July 1, 1993, the rate for a group home program shall not increase, as the result of a program change, from the rate established for the program effective June 30, 1992. For rate increases as a result of a program change which became effective between July 1, 1992, and the effective date of this paragraph, the department shall adjust rates downward as necessary to comply with this chapter. Notwithstanding any other provisions of law, a group home provider shall be allowed to change a group home program to reflect a decrease in services due to the provisions of this paragraph.

(B) For the 1993–94 fiscal year, the rate for a group home program shall not increase, as the result of a program change, from the rate established for the program effective July 1, 1993, except as provided in paragraph (3).

(C) For the 1994–95 fiscal year, the 1995–96 fiscal year, the 1996–97 fiscal year, and the 1997–98 fiscal year, the rate for a group home program shall not increase, as the result of a program change, from the rate established for the program effective July 1, 1994, except as provided in paragraph (3).

(3) (A) For the 1993–94 fiscal year, the 1994–95 fiscal year, the 1995–96 fiscal year, the 1996–97 fiscal year, and the 1997–98 fiscal year, the department shall not establish a rate for a new program of a new or existing provider or approve a program change for an existing provider that either increases the program's RCL or AFDC-FC rate, or increases the licensed capacity of the program as a result of decreases in another program with a lower RCL or lower AFDC-FC rate that is operated by that provider, unless both of the conditions specified in this paragraph are met.

(i) The licensee obtains a letter of recommendation from the host county, primary placing county, or regional consortium of counties regarding the proposed program change or new program.

(ii) The county determines that there is no increased cost to the General Fund.

(B) Notwithstanding subparagraph (A), the department may grant a request for a new program or program change, not to exceed 25 beds, statewide, if (i) the licensee obtains a letter of recommendation from the host county, primary placing county, or regional consortium of counties regarding the proposed program change or new program, and (ii) the new program or program change will result in a reduction of referrals to state hospitals during the 1993–94 fiscal year, the 1994–95 fiscal year, the 1995–96 fiscal year, the 1996–97 fiscal year, or the 1997–98 fiscal year.

(*l*) General unrestricted or undesignated private charitable donations and contributions made to charitable or nonprofit organizations shall not be deducted from the cost of providing services pursuant to this section. The donations and contributions shall not be considered in any determination of maximum expenditures made by the department.

(m) The department shall, by October 1 each year, commencing October 1, 1992, provide the Joint Legislative Budget Committee with a list of any new departmental requirements established during the previous fiscal year concerning the operation of group homes, and of any unusual, industrywide increase in costs associated with the provision of group care which may have significant fiscal impact on providers of group homes care. The committee may, in fiscal year 1993–94 and beyond, use the list to determine whether an appropriation for rate adjustments is needed in the subsequent fiscal year.

(n) This section shall become operative on July 1, 1995.

SEC. 24.5. Section 11526.5 is added to the Welfare and Institutions Code, to read:

11526.5. The department shall enter into an interagency agreement with the University of California for the purpose of implementing Section 11526. The interagency agreement shall be subject to funds appropriated for its purpose by the Legislature.

SEC. 25. Section 12201 of the Welfare and Institutions Code is amended to read:

12201. (a) Except as provided in subdivision (d), the payment schedules set forth in Section 12200 shall be adjusted annually to reflect any increases or decreases in the cost of living. These adjustments shall become effective January 1 of each year. The cost-of-living adjustment shall be based on the changes in the California Necessities Index, which as used in this section shall be the weighted average of changes for food, clothing, fuel, utilities, rent, and transportation for low-income consumers. The computation of annual adjustments in the California Necessities Index shall be made in accordance with the following steps:

(1) The base period expenditure amounts for each expenditure category within the California Necessities Index used to compute the annual grant adjustment are:

Food	$ 3,027
Clothing (apparel and upkeep)	406
Fuel and other utilities	529
Rent, residential	4,883
Transportation	1,757
Total	$10,602

(2) Based on the appropriate components of the Consumer Price Index for All Urban Consumers, as published by the United States Department of Labor, Bureau of Labor Statistics, the percentage change shall be determined for the 12-month period which ends 12 months prior to the January in which the cost-of-living adjustment will take effect, for each expenditure category specified in paragraph (1) within the following geographical areas: Los Angeles-Long Beach-Anaheim, San Francisco-Oakland, San Diego, and, to the extent statistically valid information is available from the Bureau of Labor Statistics, additional geographical areas within the state which include not less than 80 percent of recipients of aid under this chapter.

(3) Calculate a weighted percentage change for each of the expenditure categories specified in subdivision (a) using the applicable weighting factors for each area used by the State Department of Industrial Relations to calculate the California Consumer Price Index (CCPI).

(4) Calculate a category adjustment factor for each expenditure category in paragraph (1) by (1) adding 100 to the applicable weighted percentage change as determined in paragraph (2) and (2) dividing the sum by 100.

(5) Determine the expenditure amounts for the current year by multiplying each expenditure amount determined for the prior year by the applicable category adjustment factor determined in paragraph (4).

(6) Determine the overall adjustment factor by dividing (1) the sum of the expenditure amounts as determined in paragraph (4) for the current year by (2) the sum of the expenditure amounts as determined in paragraph (4) for the prior year.

(b) The overall adjustment factor determined by the preceding computational steps shall be multiplied by the payment schedules established pursuant to Section 12200 as are in effect during the month of December preceding the calendar year in which the adjustments are to occur, and the product rounded to the nearest dollar. The resultant amounts shall constitute the new schedules for the categories given under subdivisions (a), (b), (c), (d), (e), (f), and (g) of Section 12200, and shall be filed with the Secretary of State. The amount as set forth in subdivision (h) of Section 12200 shall be adjusted annually pursuant to this section in the event that the

secretary agrees to administer payment under that subdivision. The payment schedule for subdivision (i) of Section 12200 shall be computed as specified, based on the new payment schedules for subdivisions (a), (b), (c), and (d) of Section 12200.

(c) The department shall adjust any amounts of aid under this chapter to insure that the minimum level required by the Social Security Act in order to maintain eligibility for funds under Title XIX of that act is met.

(d) (1) No adjustment shall be made under this section for the 1991, 1992, 1993, 1994, 1995, 1996, 1997, and 1998 calendar years to reflect any change in the cost of living. Elimination of the cost-of-living adjustment pursuant to this paragraph shall satisfy the requirements of Section 12201.05, and no further reduction shall be made pursuant to that section.

(2) Any cost-of-living adjustment granted under this section for any calendar year shall not include adjustments for any calendar year in which the cost of living was suspended pursuant to paragraph (1).

SEC. 26. Section 12201.03 of the Welfare and Institutions Code is amended to read:

12201.03. (a) For the 1992, 1993, 1994, 1995, 1996, 1997, and 1998 calendar years, if no cost-of-living adjustment is made pursuant to Section 12201, the payment schedules set forth in Sections 12200, 13920, and 13921, as adjusted pursuant to Section 12201, shall include the pass along of any cost-of-living increases in federal benefits under Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code.

(b) Notwithstanding paragraph (2) of subdivision (d) of Section 12201, any adjustments made pursuant to this section to reflect the pass along of federal cost-of-living adjustments shall be included in the base amounts for purposes of determining cost-of-living adjustments made pursuant to Section 12201.

(c) Notwithstanding subdivision (a), no pass along of any cost-of-living increase in federal benefits under Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code shall be made in 1994. This provision shall not apply to those persons receiving payments pursuant to subdivisions (e), (g), and (h) of Section 12200.

(d) Notwithstanding subdivision (a), in no event shall the payment schedules be reduced below the level required by the federal Social Security Act in order to maintain eligibility for federal funding under Title XIX of the federal Social Security Act, contained in Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

SEC. 27. Section 12301.7 is added to the Welfare and Institutions Code, to read:

12301.7. The annual administrative cost for any public authority or nonprofit consortium created pursuant to Section 12301.6, exclusive of any increase in provider wages or benefits or employer

taxes when negotiated or agreed to by the public authority or nonprofit consortium, shall be shared by the state and the counties as prescribed in Section 12306.

SEC. 28. Section 12305.6 is added to the Welfare and Institutions Code, to read:

12305.6. (a) Notwithstanding any other provision of law, any person specified in subdivision (b) shall be eligible for in-home supportive services under this chapter.

(b) Subdivision (a) shall apply to any person who meets all of the following requirements:

(1) He or she is not eligible for benefits under this chapter because of the provisions of federal Public Law 104-193 affecting eligibility under Title XVI of the Social Security Act.

(2) He or she would be eligible for benefits under this chapter but for the provisions of federal Public Law 104-193 affecting eligibility under Title XVI of the Social Security Act. Eligibility under this chapter shall include the same deeming provisions pursuant to Title XVI of the Social Security Act (Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42, United States Code).

(3) He or she continues to meet all other applicable eligibility criteria for receiving benefits under this chapter.

SEC. 29. Section 12550 of the Welfare and Institutions Code is amended to read:

12550. For the purposes of this article, "special circumstances" means those which are not common to all recipients and which arise out of need for certain goods or services, and physical infirmities or other conditions peculiar, on a nonrecurring basis, to the individual's situation. Special circumstances shall include replacement of essential household furniture and equipment, or clothing when lost, damaged or destroyed by a catastrophe, necessary moving expenses, required housing repairs, and unmet shelter needs.

This section shall become operative on July 1, 1998.

SEC. 30. Section 12551 of the Welfare and Institutions Code is amended to read:

12551. Special circumstances shall also include special needs as provided in Sections 11023 and 11023.1.

This section shall become operative on July 1, 1998.

SEC. 31. Section 12552 of the Welfare and Institutions Code is amended to read:

12552. The county shall verify that a special circumstance does exist and shall issue a warrant for payment within the guidelines provided by the department. The county shall then send a claim to the state for payment.

This section shall become operative on July 1, 1998.

SEC. 32. Section 14132.95 of the Welfare and Institutions Code is amended to read:

14132.95. (a) Personal care services, when provided to a categorically needy person as defined in Section 14050.1 and to any

person for whom coverage would be mandatory under Title XIX of the Social Security Act (Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code), but for the provisions of Public Law 104-193 affecting eligibility under Title XVI of the Social Security Act (Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code), is a covered benefit to the extent federal financial participation is available if these services are:

(1) Provided in the beneficiary's home and other locations as may be authorized by the director subject to federal approval.

(2) Authorized by county social services staff in accordance with a plan of treatment.

(3) Provided by a qualified person.

(4) Provided to a beneficiary who has a chronic, disabling condition that causes functional impairment that is expected to last at least 12 consecutive months or that is expected to result in death within 12 months and who is unable to remain safely at home without the services described in this section.

(b) The department shall seek federal approval of a state plan amendment necessary to include personal care as a medicaid service pursuant to subdivision (f) of Section 440.170 of Title 42 of the Code of Federal Regulations. For any persons who meet the criteria specified in subdivision (a), but for whom federal financial participation is not available, eligibility shall be available pursuant to Section 12305.6. All persons who receive benefits pursuant to subdivision (a) shall meet all applicable deeming provisions pursuant to Title XVI of the Social Security Act (Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42, United States Code).

(c) Subdivision (a) shall not be implemented unless the department has obtained federal approval of the state plan amendment described in subdivision (b), and the Department of Finance has determined, and has informed the department in writing, that the implementation of this section will not result in additional costs to the state relative to state appropriation for in-home supportive services under Article 7 (commencing with Section 12300) of Chapter 3, in the 1992–93 fiscal year.

(d) (1) For purposes of this section, personal care services shall mean all of the following:

(A) Assistance with ambulation.

(B) Bathing, oral hygiene and grooming.

(C) Dressing.

(D) Care and assistance with prosthetic devices.

(E) Bowel, bladder, and menstrual care.

(F) Skin care.

(G) Repositioning, range of motion exercises, and transfers.

(H) Feeding and assurance of adequate fluid intake.

(I) Respiration.

(J) Paramedical services.

(K) Assistance with self-administration of medications.

(2) Ancillary services including meal preparation and cleanup, routine laundry, shopping for food and other necessities, and domestic services may also be provided as long as these ancillary services are subordinate to personal care services. Ancillary services may not be provided separately from the basic personal care services.

(e) (1) (A) After consulting with the State Department of Social Services, the department shall adopt emergency regulations to establish the amount, scope, and duration of personal care services available to persons described in subdivision (a) in the fiscal year whenever the department determines that General Fund expenditures for personal care services provided under this section and expenditures of both General Fund moneys and federal funds received under Title XX of the federal Social Security Act for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3, are expected to exceed the General Fund appropriation and the federal appropriation under Title XX of the federal Social Security Act provided for the 1992–93 fiscal year pursuant to Article 7 (commencing with Section 12300) of Chapter 3, as it read on June 30, 1992, as adjusted for caseload growth or as increased in the Budget Act or appropriated by statute. At least 30 days prior to filing these regulations with the Secretary of State, the department shall give notice of the expected content of these regulations to the fiscal committees of both houses of the Legislature.

(B) In establishing the amount, scope, and duration of personal care services, the department shall ensure that General Fund expenditures for personal care services provided for under this section and expenditures of both General Fund moneys and federal funds received under Title XX of the federal Social Security Act for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3, do not exceed the General Fund appropriation and the federal appropriation under Title XX of the federal Social Security Act provided for the 1992–93 fiscal year pursuant to Article 7 (commencing with Section 12300) of Chapter 3, as it read on June 30, 1992, as adjusted for caseload growth or as increased in the Budget Act or appropriated by statute.

(C) For purposes of this subdivision, "caseload growth" means an adjustment factor determined by the department based on (1) growth in the number of persons eligible for benefits under Chapter 3 (commencing with Section 12000) on the basis of their disability, (2) the average increase in the number of hours in the program established pursuant to Article 7 (commencing with Section 12300) of Chapter 3 in the 1988–89 to 1992–93 fiscal years, inclusive, due to the level of impairment, and (3) any increase in program costs that is required by an increase in the mandatory minimum wage.

(2) In establishing the amount, scope, and duration of personal care services pursuant to this subdivision, the department may define and take into account, among other things:

(A) The extent to which the particular personal care services are essential or nonessential.

(B) Standards establishing the medical necessity of the services to be provided.

(C) Utilization controls.

(D) A minimum number of hours of personal care services that must first be assessed as needed as a condition of receiving personal care services pursuant to this section.

The level of personal care services shall be established so as to avoid, to the extent feasible within budgetary constraints, medical out-of-home placements.

(3) To the extent that General Fund expenditures for services provided under this section and expenditures of both General Fund moneys and federal funds received under Title XX of the federal Social Security Act for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 in the 1992–93 fiscal year, adjusted for caseload growth, exceed General Fund expenditures for services provided under this section and expenditures of both General Fund moneys and federal funds received under Title XX of the federal Social Security Act for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 in any fiscal year, the excess of these funds shall be expended for any purpose as directed in the Budget Act or as otherwise statutorily disbursed by the Legislature.

(f) Services pursuant to this section shall be rendered, under the administrative direction of the State Department of Social Services, in the manner authorized in Article 7 (commencing with Section 12300) of Chapter 3, for the In-Home Supportive Services program. A provider of personal care services shall be qualified to provide the service and shall be a person other than a member of the family. For purposes of this section, a family member means a parent of a minor child or a spouse.

(g) A beneficiary who is eligible for assistance under this section shall receive services that do not exceed 283 hours per month of personal care services.

(h) Personal care services shall not be provided to residents of facilities licensed by the department, and shall not be provided to residents of a community care facility or a residential care facility for the elderly licensed by the Community Care Licensing Division of the State Department of Social Services.

(i) Subject to any limitations that may be imposed pursuant to subdivision (e), determination of need and authorization for services shall be performed in accordance with Article 7 (commencing with Section 12300) of Chapter 3.

(j) (1) To the extent permitted by federal law, reimbursement rates for personal care services shall be equal to the rates in each county for the same mode of services in the In-Home Supportive Services program pursuant to Article 7 (commencing with Section 12300) of Chapter 3, plus any increase provided in the annual Budget

Act for personal care services rates or included in a county budget pursuant to paragraph (2).

(2) (A) The department shall establish a provider reimbursement rate methodology to determine payment rates for the individual provider mode of service that does all of the following:

(i) Is consistent with the functions and duties of entities created pursuant to Section 12301.6.

(ii) Makes any additional expenditure of state general funds subject to appropriation in the annual Budget Act.

(iii) Permits county-only funds to draw down federal financial participation consistent with federal law.

(B) This ratesetting method shall be in effect in time for any rate increases to be included in the annual Budget Act.

(C) The department may, in establishing the ratesetting method required by subparagraph (A), do both of the following:

(i) Deem the market rate for like work in each county, as determined by the Employment Development Department, to be the cap for increases in payment rates for individual practitioner services.

(ii) Provide for consideration of county input concerning the rate necessary to ensure access to services in that county.

(D) If an increase in individual practitioner rates is included in the annual Budget Act, the state-county sharing ratio shall be as established in Section 12306. If the annual Budget Act does not include an increase in individual practitioner rates, a county may use county-only funds to meet federal financial participation requirements consistent with federal law.

(3) (A) By November 1, 1993, the department shall submit a state plan amendment to the federal Health Care Financing Administration to implement this subdivision. To the extent that any element or requirement of this subdivision is not approved, the department shall submit a request to the federal Health Care Financing Administration for any waivers as would be necessary to implement this subdivision.

(B) The provider reimbursement ratesetting methodology authorized by the amendments to this subdivision in the 1993–94 Regular Session of the Legislature shall not be operative until all necessary federal approvals have been obtained.

(k) (1) The State Department of Social Services shall, by September 1, 1993, notify the following persons that they are eligible to participate in the personal care services program:

(A) Persons eligible for services pursuant to the Pickle Amendment, as adopted October 28, 1976.

(B) Persons eligible for services pursuant to subsection (c) of Section 1383c of Title 42 of the United States Code.

(2) The State Department of Social Services shall, by September 1, 1993, notify persons to whom paragraph (1) applies and who receive advance payment for in-home supportive services that they

will qualify for services under this section without a share of cost if they elect to accept payment for services on an arrears rather than an advance payment basis.

(3) Upon request by the board of supervisors, of the funds in the subaccount created pursuant to Section 17600.110, the Controller shall allocate the following amounts for the establishment of an entity specified in Section 12301.6:

(A) Two hundred fifty thousand dollars ($250,000) each to a county of the 4th, 6th, and 10th class.

(B) Two million dollars ($2,000,000) to a county of the first class.

(C) Five hundred fifty thousand dollars ($550,000) shall be allocated to counties, in the order of application by counties for these funds, as follows:

(i) Not more than one hundred thousand dollars ($100,000) may be allocated to a county with a total of fewer than 3,000 recipients of services under this section and Article 7 (commencing with Section 12300) of Chapter 3.

(ii) Not more than two hundred thousand dollars ($200,000) may be allocated to a county with a total of more than 3,000 recipients of services under this section and Article 7 (commencing with Section 12300) of Chapter 3.

(iii) A county to whom either subparagraph (A) or (B) applies shall not be eligible for funds under this subparagraph.

(*l*) An individual who is eligible for services subject to the maximum amount specified in subdivision (b) of Section 12303.4 shall be given the option of hiring his or her own provider.

(m) The county welfare department shall inform in writing any individual who is potentially eligible for services under this section of his or her right to the services.

(n) It is the intent of the Legislature that this entire section be an inseparable whole and that no part of it be severable. If any portion of this section is found to be invalid, as determined by a final judgment of a court of competent jurisdiction, this section shall become inoperative.

(o) Paragraphs (2) and (3) of subdivision (a) shall be implemented so as to conform to federal law authorizing their implementation.

(p) 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. 33. Section 15200 of the Welfare and Institutions Code, as amended by Section 27 of Chapter 91 of the Statutes of 1991, is amended to read:

15200. There is hereby appropriated out of any money in the State Treasury not otherwise appropriated, and after deducting available federal funds, the following sums:

(a) To each county for the support and maintenance of needy children, 95 percent of the sums specified in subdivision (a), and paragraphs (1) and (2) of subdivision (e) of Section 11450.

(b) To each county for the support and maintenance of pregnant mothers, 95 percent of the sums specified in subdivisions (b) and (c) of Section 11450.

(c) To each county for the support and maintenance of needy children, 40 percent of the sum necessary for the adequate care of each child pursuant to subdivision (d) of Section 11450.

(d) Notwithstanding subdivision (c), the amount of funds appropriated from the General Fund in the annual Budget Act that equates to the amount claimed under the Emergency Assistance Program that has been included in the state's Temporary Assistance for Needy Families block grant for foster care maintenance payments shall be considered federal funds for the purposes of calculating the county share of cost, provided the expenditure of these funds contributes to the state meeting its federal maintenance of effort requirements.

(e) To each county for the support and care of hard-to-place adoptive children, 75 percent of the nonfederal share of the amount specified in Section 16121.

(f) This section shall remain in effect only until July 1, 1995, or until two years after the implementation of the Child Welfare Services Case Management System as specified in Section 16501.5, whichever occurs last, and as of that date is repealed, unless a later enacted statute which is chaptered before July 1, 1990, or two years after the implementation of the Child Welfare Services Case Management System, deletes or extends that date.

SEC. 34. Section 15200 of the Welfare and Institutions Code, as amended by Section 29 of Chapter 91 of the Statutes of 1991, is amended to read:

15200. There is hereby appropriated out of any money in the State Treasury not otherwise appropriated, and after deducting federal funds available, the following sums:

(a) To each county for the support and maintenance of needy children, 95 percent of the sums specified in subdivision (a), and paragraphs (1) and (2) of subdivision (e), of Section 11450.

(b) To each county for the support and maintenance of pregnant mothers, 95 percent of the sum specified in subdivisions (b) and (c) of Section 11450.

(c) For the adequate care of each child pursuant to subdivision (d) of Section 11450, as follows:

(1) For any county which meets the performance standards or outcome measures in Section 11215, an amount equal to 40 percent of the sum necessary for the adequate care of each child.

(2) For any county which does not meet the performance standards or outcome measures in Section 11215, an amount which shall not be less than 67.5 percent of one hundred twenty dollars

($120), and multiplied by the number of children receiving foster care in the county, added to an additional twelve dollars and fifty cents ($12.50) a month per eligible child.

(3) The department shall determine the percentage of state reimbursement for those counties which fail to meet the requirements of subparagraph (1) according to the regulations required by subdivision (b) of Section 11215.

(d) Notwithstanding subdivision (c), the amount of funds appropriated from the General Fund in the annual Budget Act that equates to the amount claimed under the Emergency Assistance Program that has been included in the state's Temporary Assistance for Needy Families block grant for foster care maintenance payments shall be considered federal funds for the purposes of calculating the county share of cost, provided the expenditure of these funds contributes to the state meeting its federal maintenance of effort requirements.

(e) To each county for the support and care of hard-to-place adoptive children, 75 percent of the nonfederal share of the amount specified in Section 16121.

(f) The State Department of Social Services shall not implement any change in the current funding ratios to counties as a reimbursement for out-of-home care placement until the development of a new performance standard system. The State Department of Social Services shall notify the Department of Finance when the new performance standard system is developed and ready for implementation. The Department of Finance, pursuant to the provisions of Section 28 of the Budget Act, shall notify the Joint Legislative Budget Committee in writing of its intent to implement a new performance standard that would impact the counties' funding allocation. The notification shall include the text of the draft regulations to implement the performance standards. Any adjustment in the county funding allocation shall not be implemented sooner than 60 days after receipt and review of the new performance standard by the Joint Legislative Budget Committee and a review of the proposed changes by the Legislative Analyst.

(g) This section shall become operative on July 1, 1995, unless the Child Welfare Services Case Management System is not implemented statewide July 1, 1993, as specified in Section 16501.5. If the Child Welfare Services Case Management System is implemented later than July 1, 1993, this section shall become operative two years after the implementation of the Child Welfare Services Case Management System.

SEC. 35. Section 15200.05 is added to the Welfare and Institutions Code, to read:

15200.05. Federal block grant funds received for the Temporary Assistance for Needy Families program pursuant to subtitle A (commencing with Section 401) of Title IV of the federal Social Security Act (42 U.S.C.)k 601 et seq.) shall be deposited in, and shall

be administered through, the Temporary Assistance for Needy Families Fund, which is hereby created in the State Treasury. Upon authorization by the Director of Finance, special accounts may be established within this fund, and the fund may be used in accounting for any federal Temporary Assistance for Needy Families block grant funds received from the federal government after August 22, 1996.

SEC. 36. Section 15200.1 of the Welfare and Institutions Code is repealed.

SEC. 37. Section 15200.1 is added to the Welfare and Institutions Code, to read:

15200.1. (a) There is hereby allocated from the General Fund the amount of funds appropriated by the Budget Act for payment of incentives to the counties. These funds shall be added to any federal incentives received by the state for child support collections and the sum shall be paid as incentives on distributed collections to each county. Each county shall receive the same percentage of collections. The percentage shall be calculated by dividing the total distributed collections of all counties by the sum of the state funds appropriated pursuant to the Budget Act and allocated pursuant to this section and the federal incentives received by the state.

(b) Incentive payments shall be paid to the appropriate county jurisdiction as determined by the department.

(c) For purposes of this section, "distributed collections" means collections used to reduce or repay aid that is paid pursuant to Chapter 2 (commencing with Section 11200), collections paid to an aided family, collections paid to a nonaided family regardless of the date of collection, collections paid to other state child support agencies on behalf of children residing in other states, and any other payments collected that qualify for federal incentives.

(d) This section shall be deemed to have become operative on July 1, 1997. This section shall become inoperative on June 30, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 38. Section 15200.2 of the Welfare and Institutions Code is repealed.

SEC. 39. Section 15200.3 of the Welfare and Institutions Code is repealed.

SEC. 40. Section 15200.7 of the Welfare and Institutions Code is repealed.

SEC. 41. Section 15200.7 is added to the Welfare and Institutions Code, to read:

15200.7. (a) (1) The department shall assess on at least an annual basis the accuracy and effectiveness of child support case processing governed by subtitle D (commencing with Section 450 of Title IV of the federal Social Security Act (42 U.S.C. Sec. 650 et seq.)) based on the federal and state requirements in effect for the time period being reviewed, using a statistically valid sample of cases. The

information for the assessment shall be based on reviews conducted by either state or county staff, as determined by the department.

(2) Counties determined not to be in compliance shall be required to develop and submit a corrective action plan to the department.

(3) A county under a corrective action plan shall be assessed on a quarterly basis until the department determines that it is in compliance with federal and state child support program requirements.

(b) The department shall collect information regarding whether cases on behalf of families receiving CalWORKs benefits are disproportionately represented in the portion of each county's case sample that is not in compliance. In the event disproportionate representation is found in a county's pool of noncompliant cases, the department shall require corrective action from that county. However, this corrective action shall not affect the county's entitlement to incentives.

(c) This section shall become inoperative on June 30, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 42. Section 15200.8 of the Welfare and Institutions Code is repealed.

SEC. 43. Section 15200.85 of the Welfare and Institutions Code is repealed.

SEC. 44. Section 15200.9 of the Welfare and Institutions Code is repealed.

SEC. 45. Section 15200.91 of the Welfare and Institutions Code is repealed.

SEC. 46. Section 15200.95 of the Welfare and Institutions Code, as amended by Section 43 of Chapter 1062 of the Statutes of 1996, is amended to read:

15200.95. (a) Each county shall be responsible for its nonfederal share of administrative expenditures for administering the child support program.

(b) Notwithstanding subdivision (a), effective July 1, 1991, to June 30, 1992, inclusive, counties shall pay the nonfederal share of the administrative costs of conducting the reviews required under Section 15200.8 from the savings counties will obtain as a result of the reduction in the maximum aid payments specified in Section 11450. Effective July 1, 1992, to June 30, 1993, inclusive, the state shall pay the nonfederal share of administrative costs of conducting the reviews required under Section 15200.8. Funding for county costs after June 30, 1993, shall be subject to the availability of funds in the annual Budget Act.

(c) In the event that the federal government does not provide the funding for federal financial participation in administrative costs of the child support program at the scheduled rates of 66 percent for regular federal financial participation and the enhanced rates as

specified in federal law as of July 1, 1997, for federal financial participation, the department shall increase the incentive rate authorized under Section 15200.1 to supplant the dollar reduction to federal financial participation.

(1) This increase shall be based on the difference between the estimated dollar reimbursement resulting from the scheduled federal financial participation and the estimated dollar reimbursement resulting from the reduced federal financial participation rates. This increase to the base incentive rate, when applied to estimated total collections for the state fiscal year, shall approximately equal the federal reduction.

(2) This increase shall be determined annually, and shall apply to total distributed collections as defined in paragraph (1) of subdivision (a) of Section 15200.1.

(3) In no event shall the increased incentive rate exceed 4 percent in any fiscal year.

(4) This increase to the incentive rate shall apply to the period of time in which the federal financial participation rate in administrative expenditures is reduced.

SEC. 47. Section 15200.95 of the Welfare and Institutions Code, as amended by Section 44 of Chapter 1062 of the Statutes of 1996, is repealed.

SEC. 48. Section 15204.15 is added to the Welfare and Institutions Code, to read:

15204.15. To the extent permitted by federal law and upon authorization pursuant to statute, including the annual Budget Act, the Director of Finance may transfer moneys in the Federal Trust Fund derived from the federal Temporary Assistance for Needy Families block grant for augmentation of moneys received pursuant to the federal Child Care and Development Block Grant and the block grant provided for pursuant to Title XX of the federal Social Security Act (42 U.S.C. Sec. 1397). The transfer may be made not sooner than 30 days after notification, in writing, to the chairperson of the committee in each house of the Legislature that considers appropriations and the Chairperson of the Joint Legislative Budget Committee, or not sooner than whatever lesser time the Chairperson of the Joint Legislative Budget Committee or his or her designee may, in each instance, determine.

SEC. 49. Section 15204.25 is added to the Welfare and Institutions Code, to read:

15204.25. Notwithstanding any other provision of law, the amount of federal funds appropriated in the annual Budget Act that equates to the amount claimed under the Emergency Assistance Program that has been included in the state's Temporary Assistance for Needy Families block grant for county administration shall be considered federal funds for the purposes of calculating the county share of cost, provided the expenditure of these funds contributes to the state meeting its federal maintenance of effort requirements.

SEC. 50. The heading of Article 2 (commencing with Section 16525.10) of Chapter 5.3 of Part 4 of Division 9 of the Welfare and Institutions Code is amended to read:

Article 2. Options for Recovery Program

SEC. 51. Section 16525.10 of the Welfare and Institutions Code is amended to read:

16525.10. (a) In order to promote the development of placements that will allow children to move into more homelike environments, the department shall establish "Options for Recovery" as a permanent program. This program shall be available to any county that requests participation pursuant to procedures established by the department to the extent funds are made available through the Budget Act.

(b) Notwithstanding any other provision of law, the "Options for Recovery" services shall be funded with a 30-percent nonfederal county share consistent with the normal sharing ratio for child welfare services. This county share may be provided with county general funds, or other sources of funds which are unrestricted and are eligible for this use as provided by the funding source. The source of the county share shall meet all applicable state and federal requirements and provide counties with maximum flexibility.

SEC. 52. Section 16525.15 of the Welfare and Institutions Code is amended to read:

16525.15. (a) A participating county shall select a specialized foster family home for the child within the county in which the child's eligibility is established.

(b) If an eligible child's out-of-home placement changes from one participating county to another participating county, the child shall remain eligible for services.

SEC. 53. Section 16525.27 of the Welfare and Institutions Code is amended to read:

16525.27. (a) Each participating county shall submit written progress reports as required by the department.

(b) The progress report required by subdivision (a) shall include, but need not be limited to, all of the following data:

(1) An estimate of the number of children adjudicated dependents of the juvenile court under Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2 who are eligible children.

(2) The number of eligible children who are in all of the following:

(A) Foster family homes.

(B) Group homes.

(C) Homes of relative caretakers.

(D) Certified foster family homes.

(3) The number of eligible children who are in specialized foster care placements during and at the termination of the demonstration project.

(4) The cost of providing training to foster parents in the care of eligible children.

(5) The cost of providing specialized care for eligible children.

(6) The cost of providing respite care services and the number of respite care hours each family received.

SEC. 54. Section 16525.28 of the Welfare and Institutions Code is repealed.

SEC. 55. Article 3 (commencing with Section 16525.40) of Chapter 5.3 of Part 4 of Division 9 of the Welfare and Institutions Code is repealed.

SEC. 56. Section 18205 is added to the Welfare and Institutions Code, to read:

18205. The director may, pursuant to this article, approve county demonstration projects to provide employment and training services to nonsupporting noncustodial parents of children who are recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3. In a county operating a demonstration project pursuant to this section, the superior court may order a nonsupporting noncustodial parent of a child receiving aid under Chapter 2 (commencing with Section 11200) of Part 3 to participate, as appropriate, in job training, job search, vocational rehabilitation, and other work activities, as well as in parental development training. The superior court, the child support division of the district attorney's office, and the county welfare department, in a demonstration county, shall all agree to cooperate in the operation of the demonstration project.

SEC. 57. Chapter 15 (commencing with Section 18996) is added to Part 6 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 15. EMERGENCY FOOD ASSISTANCE PROGRAM ADVISORY BOARD

18996. (a) The Emergency Food Assistance Program Advisory Board is hereby established. The board shall provide advice and assistance in the operation of the emergency food assistance program (EFAP). The board shall annually review the state plan and any amendments submitted to the United States Department of Agriculture by the state, as well as the EFAP budget and review the EFAP annual report. The plan shall include equitable criteria for eligibility and the distribution of commodities and administrative funds.

(b) The board shall consist of 18 members, 10 to be appointed by the Governor, four to be appointed by the Senate Committee on Rules, and four to be appointed by the Speaker of the Assembly. Appointments shall reflect geographic diversity statewide.

(c) The Governor's appointees shall consist of representatives of four food banks, four congregate feeding programs, one statewide nonprofit food policy organization, and one nutrition educator. The Senate and Assembly's appointments shall consist of two food banks each and two congregate feeding programs each.

(d) The board shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 58. Section 19806.1 is added to the Welfare and Institutions Code, to read:

19806.1. (a) Notwithstanding any other provision of law, for the 1997–98 fiscal year, each independent living center, except the Disability Resources Agency for Independent Living, the Independent Living Center of Kern County, and the Placer Independent Resource Services, shall receive, to the extent funds are appropriated by the Legislature, at least two hundred thirty-five thousand dollars ($235,000) in base grant funds allocated by the department, excluding state incentive funds; Independent Living Center of Kern County and Placer Independent Resource Services shall each receive, to the extent funds are appropriated by the Legislature, at least twenty-four thousand dollars ($24,000) in base grant funds allocated by the department, excluding state incentive funds; and the Disability Research Agency for Independent Living shall receive no base grant funds.

(b) Notwithstanding any other provision of law, for the 1997–98 fiscal year, to the extent funds are appropriated by the Legislature, four hundred seventy-nine thousand dollars ($479,000) shall be allocated as state incentive funds pursuant to subdivisions (b) to (d), inclusive, of Section 19806.

(c) Notwithstanding any other provision of law, for the 1997–98 fiscal year, to the extent funds are appropriated by the Legislature, after allocation of base grant and state incentive funds pursuant to subdivisions (a) and (b), remaining funds shall be allocated among independent living centers on the basis of the ratio of the total of the general population in an independent living center's geographic service area as compared to the total of the general population in all independent living centers geographic services areas statewide, utilizing 1995 Department of Finance population data.

(d) This section shall become effective only if the Budget Act of 1997, Item 5160-101-001 (c) for independent living centers exceeds the six million eight hundred thirty-seven thousand dollars ($6,837,000) appropriated in the Budget Act of 1996 by two million nine hundred thousand dollars ($2,900,000) or more.

SEC. 58.5. The sum of one million dollars ($1,000,000) is hereby appropriated from the Federal Trust Fund, out of Temporary Assistance for Needy Families block grant moneys received pursuant to Part A (commencing with Section 401) of Title IV of the federal Social Security Act (42 U.S.C. Sec. 601 et seq.), to the State

Department of Social Services in order to implement the interagency agreement entered into pursuant to Section 11526.5 of the Welfare and Institutions Code. If a fund other than the Federal Trust Fund is created for deposit of federal Temporary Assistance for Needy Families block grant moneys, the Director of Finance may adjust this appropriation to reflect the appropriation of moneys from that newly created fund. It is the intent of the Legislature that all expenditures made pursuant to the interagency agreement from moneys appropriated pursuant to this section fully qualify as appropriate uses of federal Temporary Assistance for Needy Families block grant funds.

SEC. 59. The repeal of Section 15200.91 of the Welfare and Institutions Code by this act repeals Section 15200.91 of the Welfare and Institutions Code as added by Chapter 1062 of the Statutes of 1996. If S.B. 936 of the 1997–98 Regular Session is enacted and adds Section 15200.91 to the Welfare and Institutions Code, Section 15200.91 of the Welfare and Institutions Code as added by S.B. 936 shall become operative and effective, and the repeal of Section 15200.91 of the Welfare and Institutions Code, as added by Chapter 1062 of the Statutes of 1996, by this act, shall have no effect on Section 15200.91 of the Welfare and Institutions Code as added by S.B. 936.

SEC. 60. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

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

SEC. 61. 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 apply to the 1997–98 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 607

An act to amend Sections 53, 17250, and 24349 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 1, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Section 53 of the Revenue and Taxation Code is amended to read:

53. (a) Except as provided in subdivision (b), the initial base year value for fruit and nut trees and grapevines subject to exemption pursuant to subdivision (i) of Section 3 of Article XIII of the California Constitution shall be the full cash value of those properties as of the lien date of their first taxable year.

(b) A county board of supervisors may, after consulting with affected local agencies within the county's boundaries, provide by ordinance that the initial base year value for replacement grapevines that are planted to replace grapevines less than 15 years of age that were removed solely as a result of phylloxera infestation or Pierce's Disease, as certified in writing by the county agricultural commissioner, shall be the base year value of the removed vines factored to the lien date of the first taxable year of the replacement vines. The assignment of base year replacement value is limited to replacement grapevines that are substantially equivalent to the vines that were replaced, and are planted on the same parcel as the replaced vines. For purposes of this subdivision, replacement vines are substantially equivalent to the vines they replace if the replacement vines are of a similar type and are planted at a similar density.

SEC. 2. Section 17250 of the Revenue and Taxation Code is amended to read:

17250. (a) (1) Section 168 of the Internal Revenue Code, relating to the accelerated cost recovery system, shall apply to assets placed in service on or after January 1, 1987, in taxable years beginning on or after January 1, 1987.

(2) In the case of assets placed in service on or after January 1, 1987, in taxable years beginning prior to January 1, 1987, a taxpayer may elect to have Sections 168 and 179 of the Internal Revenue Code apply by doing all of the following:

(A) Making an election on the return for the first taxable year beginning on or after January 1, 1987.

(B) Establishing a depreciation adjustment account for each asset (or group of assets) in an amount equal to the difference between the depreciation allowed on the federal return for each asset (or group of assets) and the depreciation allowed under this part.

(C) The depreciation adjustment account (or accounts) established under subparagraph (B) shall be amortized over 60 months beginning with the first taxable year beginning on or after January 1, 1987.

(3) In the case of assets placed in service prior to January 1, 1987, in taxable years beginning prior to January 1, 1987, Section 168 of the Internal Revenue Code shall apply only to residential rental property as provided by former Section 17250.5 (as amended by Chapter 1461 of the Statutes of 1985).

(b) For purposes of subdivision (a), any reference to "tax imposed by this chapter" in Section 168 of the Internal Revenue Code means "net tax," as defined in Section 17039.

(c) For purposes of paragraph (1) of subdivision (a), Section 168 of the Internal Revenue Code shall be modified as follows:

(1) Section 168(e)(3) shall be modified to provide that any grapevine, replaced in a vineyard in California in any taxable year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, or replaced in a vineyard in California in any taxable year beginning on or after January 1, 1997, as a direct result of Pierce's Disease in that vineyard, shall be "five-year property," rather than "10-year property."

(2) Section 168(g)(3) of the Internal Revenue Code shall be modified to provide that any grapevine, replaced in a vineyard in California in any taxable year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, or replaced in a vineyard in California in any taxable year beginning on or after January 1, 1997, as a direct result of Pierce's Disease in that vineyard, shall have a class life of 10 years.

(d) Every taxpayer claiming a depreciation deduction with respect to grapevines as described in subdivision (c) shall obtain a written certification from an independent state-certified integrated pest management adviser, or a state agricultural commissioner or adviser, that specifies that the replanting was necessary to restore a vineyard infested with phylloxera or Pierce's Disease. The taxpayer shall retain the certification for future audit purposes.

(e) (1) Section 169 of the Internal Revenue Code, relating to amortization of pollution control facilities, shall apply, except as otherwise provided.

(2) The deduction allowed by this section shall be available only with respect to facilities located in this state.

(3) The "state certifying authority," as defined in Section 169(d)(2) of the Internal Revenue Code, means the State Air

Resources Board, in the case of air pollution, and the State Water Resources Control Board, in the case of water pollution.

(f) For property used in a trade or business, or held for production of income, there shall be allowed as a depreciation deduction a reasonable allowance for the cost of a solar energy system and allowable conservation measures over a 60-month period for taxable years beginning before January 1, 1987.

(g) Section 7622(c)[e] of Public Law 101-239, relating to the effective date of changes in treatment of transfers of franchises, trademarks, and trade names, shall apply.

(h) Section 7645(b) of Public Law 101-239, relating to the effective date of disallowance of depreciation for certain term interests, shall apply.

(i) The amendments to Section 168(c)(1) of the Internal Revenue Code made by Section 13151 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to increase in recovery period for nonresidential real property, shall apply to property placed in service on or after January 1, 1997, in taxable years beginning on or after January 1, 1997.

SEC. 2.1. Section 17250 of the Revenue and Taxation Code is amended to read:

17250. (a) (1) Section 168 of the Internal Revenue Code, relating to the accelerated cost recovery system, shall apply to assets placed in service on or after January 1, 1987, in taxable years beginning on or after January 1, 1987.

(2) In the case of assets placed in service on or after January 1, 1987, in taxable years beginning prior to January 1, 1987, a taxpayer may elect to have Sections 168 and 179 of the Internal Revenue Code apply by doing all of the following:

(A) Making an election on the return for the first taxable year beginning on or after January 1, 1987.

(B) Establishing a depreciation adjustment account for each asset (or group of assets) in an amount equal to the difference between the depreciation allowed on the federal return for each asset (or group of assets) and the depreciation allowed under this part.

(C) The depreciation adjustment account (or accounts) established under subparagraph (B) shall be amortized over 60 months beginning with the first taxable year beginning on or after January 1, 1987.

(3) In the case of assets placed in service prior to January 1, 1987, in taxable years beginning prior to January 1, 1987, Section 168 of the Internal Revenue Code shall apply only to residential rental property as provided by former Section 17250.5 (as amended by Chapter 1461 of the Statutes of 1985).

(b) For purposes of subdivision (a), any reference to "tax imposed by this chapter" in Section 168 of the Internal Revenue Code means "net tax," as defined in Section 17039.

(c) For purposes of paragraph (1) of subdivision (a), Section 168 of the Internal Revenue Code shall be modified as follows:

(1) Section 168(e)(3) shall be modified to provide that any grapevine, replaced in a vineyard in California in any taxable year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, or replaced in a vineyard in California in any taxable year beginning on or after January 1, 1997, as a direct result of Pierce's Disease in that vineyard, shall be "five-year property," rather than "10-year property."

(2) Section 168(g)(3) of the Internal Revenue Code shall be modified to provide that any grapevine, replaced in a vineyard in California in any taxable year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, or replaced in a vineyard in California in any taxable year beginning on or after January 1, 1997, as a direct result of Pierce's Disease in that vineyard, shall have a class life of 10 years.

(d) Every taxpayer claiming a depreciation deduction with respect to grapevines as described in subdivision (c) shall obtain a written certification from an independent state-certified integrated pest management adviser, or a state agricultural commissioner or adviser, that specifies that the replanting was necessary to restore a vineyard infested with phylloxera or Pierce's Disease. The taxpayer shall retain the certification for future audit purposes.

(e) (1) Section 169 of the Internal Revenue Code, relating to amortization of pollution control facilities, shall apply, except as otherwise provided.

(2) The deduction allowed by this section shall be available only with respect to facilities located in this state.

(3) The "state certifying authority," as defined in Section 169(d)(2) of the Internal Revenue Code, means the State Air Resources Board, in the case of air pollution, and the State Water Resources Control Board, in the case of water pollution.

(f) For property used in a trade or business, or held for production of income, there shall be allowed as a depreciation deduction a reasonable allowance for the cost of a solar energy system and allowable conservation measures over a 60-month period for taxable years beginning before January 1, 1987.

(g) Section 7622(c)[e] of Public Law 101-239, relating to the effective date of changes in treatment of transfers of franchises, trademarks, and trade names, shall apply.

(h) Section 7645(b) of Public Law 101-239, relating to the effective date of disallowance of depreciation for certain term interests, shall apply.

(i) The amendments to Section 168(c)(1) of the Internal Revenue Code made by Section 13151 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to increase in recovery period for nonresidential real property, shall apply to property placed in service

on or after January 1, 1997, in taxable years beginning on or after January 1, 1997.

(j) Section 168(i)(8) of the Internal Revenue Code, relating to leasehold improvements, is modified to provide that an improvement shall be treated for purposes of determining gain or loss under this part as disposed of by the lessor when so disposed of or abandoned if both of the following occur:

(1) The improvement is made by the lessor of leased property for the lessee of that property.

(2) The improvement is irrevocably disposed of or abandoned by the lessor at the termination of the lease by the lessee.

The amendments to this section by the act adding this subdivision shall apply to property disposed of or abandoned on or after January 1, 1997, in taxable years beginning on or after January 1, 1997.

SEC. 2.2. Section 17250 of the Revenue and Taxation Code is amended to read:

17250. (a) (1) Section 168 of the Internal Revenue Code, relating to the accelerated cost recovery system, shall apply to assets placed in service on or after January 1, 1987, in taxable years beginning on or after January 1, 1987.

(2) In the case of assets placed in service on or after January 1, 1987, in taxable years beginning prior to January 1, 1987, a taxpayer may elect to have Sections 168 and 179 of the Internal Revenue Code apply by doing all of the following:

(A) Making an election on the return for the first taxable year beginning on or after January 1, 1987.

(B) Establishing a depreciation adjustment account for each asset (or group of assets) in an amount equal to the difference between the depreciation allowed on the federal return for each asset (or group of assets) and the depreciation allowed under this part.

(C) The depreciation adjustment account (or accounts) established under subparagraph (B) shall be amortized over 60 months beginning with the first taxable year beginning on or after January 1, 1987.

(3) In the case of assets placed in service prior to January 1, 1987, in taxable years beginning prior to January 1, 1987, Section 168 of the Internal Revenue Code shall apply only to residential rental property as provided by former Section 17250.5 (as amended by Chapter 1461 of the Statutes of 1985).

(b) For purposes of subdivision (a), any reference to "tax imposed by this chapter" in Section 168 of the Internal Revenue Code means "net tax," as defined in Section 17039.

(c) For purposes of paragraph (1) of subdivision (a), Section 168 of the Internal Revenue Code shall be modified as follows:

(1) Section 168(e)(3) shall be modified to provide that any grapevine, replaced in a vineyard in California in any taxable year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, or replaced in a vineyard in California

in any taxable year beginning on or after January 1, 1997, as a direct result of Pierce's Disease in that vineyard, shall be "five-year property," rather than "10-year property."

(2) Section 168(g)(3) of the Internal Revenue Code shall be modified to provide that any grapevine, replaced in a vineyard in California in any taxable year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, or replaced in a vineyard in California in any taxable year beginning on or after January 1, 1997, as a direct result of Pierce's Disease in that vineyard, shall have a class life of 10 years.

(d) Every taxpayer claiming a depreciation deduction with respect to grapevines as described in subdivision (c) shall obtain a written certification from an independent state-certified integrated pest management adviser, or a state agricultural commissioner or adviser, that specifies that the replanting was necessary to restore a vineyard infested with phylloxera or Pierce's Disease. The taxpayer shall retain the certification for future audit purposes.

(e) (1) Section 169 of the Internal Revenue Code, relating to amortization of pollution control facilities, shall apply, except as otherwise provided.

(2) The deduction allowed by this section shall be available only with respect to facilities located in this state.

(3) The "state certifying authority," as defined in Section 169(d)(2) of the Internal Revenue Code, means the State Air Resources Board, in the case of air pollution, and the State Water Resources Control Board, in the case of water pollution.

(f) For property used in a trade or business, or held for production of income, there shall be allowed as a depreciation deduction a reasonable allowance for the cost of a solar energy system and allowable conservation measures over a 60-month period for taxable years beginning before January 1, 1987.

(g) Section 7622(c)[e] of Public Law 101-239, relating to the effective date of changes in treatment of transfers of franchises, trademarks, and trade names, shall apply.

(h) Section 7645(b) of Public Law 101-239, relating to the effective date of disallowance of depreciation for certain term interests, shall apply.

(i) The amendments to Section 168(c)(1) of the Internal Revenue Code made by Section 13151 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to increase in recovery period for nonresidential real property, shall apply to property placed in service on or after January 1, 1997, in taxable years beginning on or after January 1, 1997.

(j) Section 168(j) of the Internal Revenue Code, relating to property on Indian reservations, shall not apply.

SEC. 2.3. Section 17250 of the Revenue and Taxation Code is amended to read:

17250. (a) (1) Section 168 of the Internal Revenue Code, relating to the accelerated cost recovery system, shall apply to assets placed in service on or after January 1, 1987, in taxable years beginning on or after January 1, 1987.

(2) In the case of assets placed in service on or after January 1, 1987, in taxable years beginning prior to January 1, 1987, a taxpayer may elect to have Sections 168 and 179 of the Internal Revenue Code apply by doing all of the following:

(A) Making an election on the return for the first taxable year beginning on or after January 1, 1987.

(B) Establishing a depreciation adjustment account for each asset (or group of assets) in an amount equal to the difference between the depreciation allowed on the federal return for each asset (or group of assets) and the depreciation allowed under this part.

(C) The depreciation adjustment account (or accounts) established under subparagraph (B) shall be amortized over 60 months beginning with the first taxable year beginning on or after January 1, 1987.

(3) In the case of assets placed in service prior to January 1, 1987, in taxable years beginning prior to January 1, 1987, Section 168 of the Internal Revenue Code shall apply only to residential rental property as provided by former Section 17250.5 (as amended by Chapter 1461 of the Statutes of 1985).

(b) For purposes of subdivision (a), any reference to "tax imposed by this chapter" in Section 168 of the Internal Revenue Code means "net tax," as defined in Section 17039.

(c) For purposes of paragraph (1) of subdivision (a), Section 168 of the Internal Revenue Code shall be modified as follows:

(1) Section 168(e)(3) shall be modified to provide that any grapevine, replaced in a vineyard in California in any taxable year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, or replaced in a vineyard in California in any taxable year beginning on or after January 1, 1997, as a direct result of Pierce's Disease in that vineyard, shall be "five-year property," rather than "10-year property."

(2) Section 168(g)(3) of the Internal Revenue Code shall be modified to provide that any grapevine, replaced in a vineyard in California in any taxable year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, or replaced in a vineyard in California in any taxable year beginning on or after January 1, 1997, as a direct result of Pierce's Disease in that vineyard, shall have a class life of 10 years.

(d) Every taxpayer claiming a depreciation deduction with respect to grapevines as described in subdivision (c) shall obtain a written certification from an independent state-certified integrated pest management adviser, or a state agricultural commissioner or adviser, that specifies that the replanting was necessary to restore a

vineyard infested with phylloxera or Pierce's Disease. The taxpayer shall retain the certification for future audit purposes.

(e) (1) Section 169 of the Internal Revenue Code, relating to amortization of pollution control facilities, shall apply, except as otherwise provided.

(2) The deduction allowed by this section shall be available only with respect to facilities located in this state.

(3) The "state certifying authority," as defined in Section 169(d)(2) of the Internal Revenue Code, means the State Air Resources Board, in the case of air pollution, and the State Water Resources Control Board, in the case of water pollution.

(f) For property used in a trade or business, or held for production of income, there shall be allowed as a depreciation deduction a reasonable allowance for the cost of a solar energy system and allowable conservation measures over a 60-month period for taxable years beginning before January 1, 1987.

(g) Section 7622(c)[e] of Public Law 101-239, relating to the effective date of changes in treatment of transfers of franchises, trademarks, and trade names, shall apply.

(h) Section 7645(b) of Public Law 101-239, relating to the effective date of disallowance of depreciation for certain term interests, shall apply.

(i) The amendments to Section 168(c)(1) of the Internal Revenue Code made by Section 13151 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to increase in recovery period for nonresidential real property, shall apply to property placed in service on or after January 1, 1997, in taxable years beginning on or after January 1, 1997.

(j) Section 168(i)(8) of the Internal Revenue Code, relating to leasehold improvements, is modified to provide that an improvement shall be treated for purposes of determining gain or loss under this part as disposed of by the lessor when so disposed of or abandoned if both of the following occur:

(1) The improvement is made by the lessor of leased property for the lessee of that property.

(2) The improvement is irrevocably disposed of or abandoned by the lessor at the termination of the lease by the lessee.

The amendments to this section by the act adding this subdivision shall apply to property disposed of or abandoned on or after January 1, 1997, in taxable years beginning on or after January 1, 1997.

(k) Section 168(j) of the Internal Revenue Code, relating to property on Indian reservations, shall not apply.

SEC. 3. Section 24349 of the Revenue and Taxation Code is amended to read:

24349. (a) There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear, and tear (including a reasonable allowance for obsolescence)—

(1) Of property used in the trade or business; or

(2) Of property held for the production of income.

(b) Except as otherwise provided in subdivision (c), for income years ending after December 31, 1958, the term "reasonable allowance" as used in subdivision (a) shall include, but shall not be limited to, an allowance computed in accordance with regulations prescribed by the Franchise Tax Board, under any of the following methods:

(1) The straight line method.

(2) The declining balance method, using a rate not exceeding twice the rate that would have been used had the annual allowance been computed under the method described in paragraph (1).

(3) The sum of the years-digits method.

(4) Any other consistent method productive of an annual allowance that, when added to all allowances for the period commencing with the taxpayer's use of the property and including the income year, does not, during the first two-thirds of the useful life of the property, exceed the total of those allowances that would have been used had those allowances been computed under the method described in paragraph (2).

Nothing in this subdivision shall be construed to limit or reduce an allowance otherwise allowable under subdivision (a).

(c) Any grapevine replaced in a vineyard in California in an income year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, and any grapevine replaced in a vineyard in California in an income year beginning on or after January 1, 1997, as a direct result of Pierce's Disease in that vineyard, shall have a useful life of five years, except that it shall have a class life of 10 years for purposes of depreciation under Section 168(g)(2) of the Internal Revenue Code where the taxpayer has made an election under Section 263A(d)(3) of the Internal Revenue Code not to capitalize costs of the infested vineyard. Every taxpayer claiming a deduction under this section with respect to a grapevine as described in this subdivision shall obtain a written certification from an independent state-certified integrated pest management adviser, or a state agricultural commissioner or adviser, that specifies that the replanting was necessary to restore a vineyard infested with phylloxera or Pierce's Disease. The taxpayer shall retain the certification for future audit purposes.

(d) For purposes of this part, the deduction for property leased to governments and other tax-exempt entities, as defined in Section 168(h) of the Internal Revenue Code, shall be limited to the amount determined under Section 168(g) of the Internal Revenue Code, relating to alternative depreciation system for certain property.

SEC. 3.1. Section 24349 of the Revenue and Taxation Code is amended to read:

24349. (a) There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear, and tear (including a reasonable allowance for obsolescence)—

(1) Of property used in the trade or business; or

(2) Of property held for the production of income.

(b) Except as otherwise provided in subdivision (c), for income years ending after December 31, 1958, the term "reasonable allowance" as used in subdivision (a) shall include, but shall not be limited to, an allowance computed in accordance with regulations prescribed by the Franchise Tax Board, under any of the following methods:

(1) The straight line method.

(2) The declining balance method, using a rate not exceeding twice the rate that would have been used had the annual allowance been computed under the method described in paragraph (1).

(3) The sum of the years-digits method.

(4) Any other consistent method productive of an annual allowance that, when added to all allowances for the period commencing with the taxpayer's use of the property and including the income year, does not, during the first two-thirds of the useful life of the property, exceed the total of those allowances that would have been used had those allowances been computed under the method described in paragraph (2).

Nothing in this subdivision shall be construed to limit or reduce an allowance otherwise allowable under subdivision (a).

(c) Any grapevine replaced in a vineyard in California in an income year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, and any grapevine replaced in a vineyard in California in an income year beginning on or after January 1, 1997, as a direct result of Pierce's Disease in that vineyard, shall have a useful life of five years, except that it shall have a class life of 10 years for purposes of depreciation under Section 168(g)(2) of the Internal Revenue Code where the taxpayer has made an election under Section 263A(d)(3) of the Internal Revenue Code not to capitalize costs of the infested vineyard. Every taxpayer claiming a deduction under this section with respect to a grapevine as described in this subdivision shall obtain a written certification from an independent state-certified integrated pest management adviser, or a state agricultural commissioner or adviser, that specifies that the replanting was necessary to restore a vineyard infested with phylloxera or Pierce's Disease. The taxpayer shall retain the certification for future audit purposes.

(d) For purposes of this part, the deduction for property leased to governments and other tax-exempt entities, as defined in Section 168(h) of the Internal Revenue Code, shall be limited to the amount determined under Section 168(g) of the Internal Revenue Code, relating to alternative depreciation system for certain property.

(e) An improvement shall be treated for purposes of determining gain or loss under this part as disposed of by the lessor if both of the following occur:

(1) The improvement is made by the lessor of leased property for the lessee of that property.

(2) The improvement is irrevocably disposed of or abandoned by the lessor at the termination of the lease by the lessee.

This subdivision shall not apply to any property to which Section 168 of the Internal Revenue Code does not apply for federal purposes by reason of Section 168(f) of the Internal Revenue Code. Any election made under Section 168(f)(1) of the Internal Revenue Code for federal purposes shall be treated as a binding election for state purposes and no separate election under subdivision (e) of Section 23051.5 shall be allowed.

The amendments to this section by the act adding this subdivision shall apply to property disposed of or abandoned on or after January 1, 1997, in income years beginning on or after January 1, 1997.

SEC. 3.2. Section 24349 of the Revenue and Taxation Code is amended to read:

24349. (a) There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear, and tear (including a reasonable allowance for obsolescence)—

(1) Of property used in the trade or business; or

(2) Of property held for the production of income.

(b) Except as otherwise provided in subdivision (c), for income years ending after December 31, 1958, the term "reasonable allowance" as used in subdivision (a) shall include, but shall not be limited to, an allowance computed in accordance with regulations prescribed by the Franchise Tax Board, under any of the following methods:

(1) The straight line method.

(2) The declining balance method, using a rate not exceeding twice the rate that would have been used had the annual allowance been computed under the method described in paragraph (1).

(3) The sum of the years-digits method.

(4) Any other consistent method productive of an annual allowance that, when added to all allowances for the period commencing with the taxpayer's use of the property and including the income year, does not, during the first two-thirds of the useful life of the property, exceed the total of those allowances that would have been used had those allowances been computed under the method described in paragraph (2).

Nothing in this subdivision shall be construed to limit or reduce an allowance otherwise allowable under subdivision (a).

(c) Any grapevine replaced in a vineyard in California in an income year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, and any grapevine replaced in a vineyard in California in an income year beginning on or after January 1, 1997, as a direct result of Pierce's Disease in that vineyard, shall have a useful life of five years, except that it shall have a class life of 10 years for purposes of depreciation under Section

168(g)(2) of the Internal Revenue Code where the taxpayer has made an election under Section 263A(d)(3) of the Internal Revenue Code not to capitalize costs of the infested vineyard. Every taxpayer claiming a deduction under this section with respect to a grapevine as described in this subdivision shall obtain a written certification from an independent state-certified integrated pest management adviser, or a state agricultural commissioner or adviser, that specifies that the replanting was necessary to restore a vineyard infested with phylloxera or Pierce's Disease. The taxpayer shall retain the certification for future audit purposes.

(d) For purposes of this part, the deduction for property leased to governments and other tax-exempt entities, as defined in Section 168(h) of the Internal Revenue Code, shall be limited to the amount determined under Section 168(g) of the Internal Revenue Code, relating to alternative depreciation system for certain property.

(e) (1) In the case of any building erected or improvements made on leased property, if the building or improvement is property to which this section applies, the depreciation deduction shall be determined under the provisions of this section.

(2) An improvement shall be treated for purposes of determining gain or loss under this part as disposed of by the lessor if both of the following occur:

(A) The improvement is made by the lessor of leased property for the lessee of that property.

(B) The improvement is irrevocably disposed of or abandoned by the lessor at the termination of the lease by the lessee.

(3) This subdivision shall not apply to any property to which Section 168 of the Internal Revenue Code does not apply for federal purposes by reason of Section 168(f) of the Internal Revenue Code. Any election made under Section 168(f)(1) of the Internal Revenue Code for federal purposes shall be treated as a binding election for state purposes and no separate election under subdivision (e) of Section 23051.5 shall be allowed.

(4) This subdivision shall apply to property disposed of or abandoned on or after January 1, 1997, in income years beginning on or after January 1, 1997.

(f) (1) Section 167(g) of the Internal Revenue Code, relating to depreciation under income forecast method, shall apply, except as otherwise provided.

(2) Section 167(g)(2)(C) of the Internal Revenue Code is modified by substituting "Section 19521" in lieu of "Section 460(b)(7)" of the Internal Revenue Code.

(3) Section 167(g)(5)(D) of the Internal Revenue Code is modified by substituting "Part 10.2 (commencing with Section 18401) (other than Article 2 (commencing with Section 19021) and Sections 19142 to 19150, inclusive)" in lieu of "Subtitle F (other than Sections 6654 and 6655)."

SEC. 3.3. Section 24349 of the Revenue and Taxation Code is amended to read:

24349. (a) There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear, and tear (including a reasonable allowance for obsolescence)—

(1) Of property used in the trade or business; or

(2) Of property held for the production of income.

(b) Except as otherwise provided in subdivision (c), for income years ending after December 31, 1958, the term "reasonable allowance" as used in subdivision (a) shall include, but shall not be limited to, an allowance computed in accordance with regulations prescribed by the Franchise Tax Board, under any of the following methods:

(1) The straight-line method.

(2) The declining balance method, using a rate not exceeding twice the rate that would have been used had the annual allowance been computed under the method described in paragraph (1).

(3) The sum of the years-digits method.

(4) Any other consistent method productive of an annual allowance that, when added to all allowances for the period commencing with the taxpayer's use of the property and including the income year, does not, during the first two-thirds of the useful life of the property, exceed the total of those allowances that would have been used had those allowances been computed under the method described in paragraph (2).

Nothing in this subdivision shall be construed to limit or reduce an allowance otherwise allowable under subdivision (a).

(c) Any grapevine replaced in a vineyard in California in an income year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, and any grapevine replaced in a vineyard in California in an income year beginning on or after January 1, 1997, as a direct result of Pierce's Disease in that vineyard, shall have a useful life of five years, except that it shall have a class life of 10 years for purposes of depreciation under Section 168(g)(2) of the Internal Revenue Code where the taxpayer has made an election under Section 263A(d)(3) of the Internal Revenue Code not to capitalize costs of the infested vineyard. Every taxpayer claiming a deduction under this section with respect to a grapevine as described in this subdivision shall obtain a written certification from an independent state-certified integrated pest management adviser, or a state agricultural commissioner or adviser, that specifies that the replanting was necessary to restore a vineyard infested with phylloxera or Pierce's Disease. The taxpayer shall retain the certification for future audit purposes.

(d) For purposes of this part, the deduction for property leased to governments and other tax-exempt entities, as defined in Section 168(h) of the Internal Revenue Code, shall be limited to the amount

determined under Section 168(g) of the Internal Revenue Code, relating to alternative depreciation system for certain property.

(e) (1) In the case of any building erected or improvements made on leased property, if the building or improvement is property to which this section applies, the depreciation deduction shall be determined under the provisions of this section.

(2) An improvement shall be treated for purposes of determining gain or loss under this part as disposed of by the lessor if both of the following occur:

(A) The improvement is made by the lessor of leased property for the lessee of that property.

(B) The improvement is irrevocably disposed of or abandoned by the lessor at the termination of the lease by the lessee.

(3) This subdivision shall not apply to any property to which Section 168 of the Internal Revenue Code does not apply for federal purposes by reason of Section 168(f) of the Internal Revenue Code. Any election made under Section 168(f)(1) of the Internal Revenue Code for federal purposes shall be treated as a binding election for state purposes and no separate election under subdivision (e) of Section 23051.5 shall be allowed.

(4) This subdivision shall apply to property disposed of or abandoned on or after January 1, 1997, in income years beginning on or after January 1, 1997.

(f) (1) Section 167(g) of the Internal Revenue Code, relating to depreciation under income forecast method, shall apply, except as otherwise provided.

(2) Section 167(g)(2)(C) of the Internal Revenue Code is modified by substituting "Section 19521" in lieu of "Section 460(b)(7)" of the Internal Revenue Code.

(3) Section 167(g)(5)(D) of the Internal Revenue Code is modified by substituting "Part 10.2 (commencing with Section 18401) (other than Article 2 (commencing with Section 19021) and Sections 19142 to 19150, inclusive)" in lieu of "Subtitle F (other than Sections 6654 and 6655)."

SEC. 4. (a) Section 2.1 of this bill incorporates amendments to Section 17250 of the Revenue and Taxation Code proposed by both this bill and AB 1155. 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 17250 of the Revenue and Taxation Code, (3) SB 455 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1155, in which case Sections 2, 2.2, and 2.3 of this bill shall not become operative.

(b) Section 2.2 of this bill incorporates amendments to Section 17250 of the Revenue and Taxation Code proposed by both this bill and SB 455. 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 17250 of the Revenue and Taxation Code, (3) AB 1155 is not enacted or as enacted does not amend that section, and

(4) this bill is enacted after SB 455, in which case Sections 2, 2.1, and 2.3 of this bill shall not become operative.

(c) Section 2.3 of this bill incorporates amendments to Section 17250 of the Revenue and Taxation Code proposed by this bill, AB 1155, and SB 455. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1998, (2) all three bills amend Section 17250 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 1155 and SB 455, in which case Sections 2, 2.1, and 2.2 of this bill shall not become operative.

SEC. 5. (a) Section 3.1 of this bill incorporates amendments to Section 24349 of the Revenue and Taxation Code proposed by both this bill and AB 1155. 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 24349 of the Revenue and Taxation Code, (3) SB 455 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1155, in which case Sections 3, 3.2, and 3.3 of this bill shall not become operative.

(b) Section 3.2 of this bill incorporates amendments to Section 24349 of the Revenue and Taxation Code proposed by both this bill and SB 455. 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 24349 of the Revenue and Taxation Code, (3) AB 1155 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 455 in which case Sections 3, 3.1, and 3.3 of this bill shall not become operative.

(c) Section 3.3 of this bill incorporates amendments to Section 24349 of the Revenue and Taxation Code proposed by this bill, AB 1155, and SB 455. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1998, (2) all three bills amend Section 24349 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 1155 and SB 455, in which case Sections 3, 3.1, and 3.2 of this bill shall not become operative.

SEC. 6. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 608

An act to amend Sections 17009, 17039, 17941, 18633.5, 23036, and 23038 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 1, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Section 17009 of the Revenue and Taxation Code is amended to read:

17009. "Corporation" includes joint stock companies or associations (including nonprofit associations that perform services, borrow money or own property, and business trusts or other business entities taxable as a corporation under regulations of the Franchise Tax Board) and insurance companies. "Corporation" also includes a trust organized and operated exclusively for purposes contained in Section 23701d.

SEC. 2. Section 17039 of the Revenue and Taxation Code is amended to read:

17039. (a) Notwithstanding any provision in this part to the contrary, for the purposes of computing tax credits, the term "net tax" means the tax imposed under either Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to lump-sum distributions) less the credits allowed by Section 17054 (relating to personal exemption credits) and any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560. Notwithstanding the preceding sentence, the "net tax" shall not be less than the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions), if any. Credits shall be allowed against "net tax" in the following order:

(1) Credits that do not contain carryover or refundable provisions, except those described in paragraphs (4) and (5).

(2) Credits that contain carryover provisions but do not contain refundable provisions.

(3) Credits that contain both carryover and refundable provisions.

(4) The minimum tax credit allowed by Section 17063 (relating to the alternative minimum tax).

(5) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(6) Credits that contain refundable provisions but do not contain carryover provisions.

The order within each paragraph shall be determined by the Franchise Tax Board.

(b) Notwithstanding the provisions of Sections 17053.5 (relating to the renter's credit), 17061 (relating to refunds pursuant to the Unemployment Insurance Code), and 19002 (relating to tax withholding), the credits provided in those sections shall be allowed in the order provided in paragraph (6) of subdivision (a).

(c) (1) Notwithstanding any other provision of this part, no tax credit shall reduce the tax imposed under Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions) below the tentative minimum tax, as defined by Section 17062, except the following credits, but only after allowance of the credit allowed by Section 17063:

(A) The credit allowed by former Section 17052.4 (relating to solar energy).

(B) The credit allowed by former Section 17052.5 (relating to solar energy).

(C) The credit allowed by Section 17052.5 (relating to solar energy).

(D) The credit allowed by Section 17052.12 (relating to research expenses).

(E) The credit allowed by former Section 17052.13 (relating to sales and use tax credit).

(F) The credit allowed by Section 17052.15 (relating to Los Angeles Revitalization Zone sales tax credit).

(G) The credit allowed by Section 17053.5 (relating to the renter's credit).

(H) The credit allowed by former Section 17053.8 (relating to enterprise zone hiring credit).

(I) The credit allowed by Section 17053.10 (relating to Los Angeles Revitalization Zone hiring credit).

(J) The credit allowed by former Section 17053.11 (relating to program area hiring credit).

(K) For each taxable year beginning on or after January 1, 1994, the credit allowed by Section 17053.17 (relating to Los Angeles Revitalization Zone hiring credit).

(L) The credit allowed by Section 17053.49 (relating to qualified property).

(M) The credit allowed by Section 17053.70 (relating to enterprise zone sales or use tax credit).

(N) The credit allowed by Section 17053.74 (relating to enterprise zone hiring credit).

(O) The credit allowed by Section 17057 (relating to clinical testing expenses).

(P) The credit allowed by Section 17058 (relating to low-income housing).

(Q) The credit allowed by Section 17061 (relating to refunds pursuant to the Unemployment Insurance Code).

(R) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(S) The credit allowed by Section 19002 (relating to tax withholding).

(2) Any credit that is partially or totally denied under paragraph (1) shall be allowed to be carried over and applied to the net tax in succeeding taxable years, if the provisions relating to that credit include a provision to allow a carryover when that credit exceeds the net tax.

(d) Unless otherwise provided, any remaining carryover of a credit allowed by a section that has been repealed or made inoperative shall continue to be allowed to be carried over under the

provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(e) (1) Unless otherwise provided, if two or more taxpayers (other than husband and wife) share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to his or her respective share of the costs paid or incurred.

(2) In the case of a partnership, the credit shall be allocated among the partners pursuant to a written partnership agreement in accordance with Section 704 of the Internal Revenue Code, relating to partner's distributive share.

(3) In the case of a husband and wife who file separate returns, the credit may be taken by either or equally divided between them.

(f) Unless otherwise provided, in the case of a partnership, any credit allowed by this part shall be computed at the partnership level, and any limitation on the expenses qualifying for the credit or limitation upon the amount of the credit shall be applied to the partnership and to each partner.

(g) (1) With respect to any taxpayer that directly or indirectly owns an interest in a business entity that is disregarded for tax purposes pursuant to Section 23038 and any regulations thereunder, the amount of any credit or credit carryforward allowable for any taxable year attributable to the disregarded business entity shall be limited in accordance with paragraphs (2) and (3).

(2) The amount of any credit otherwise allowed under this part, including any credit carryover from prior years, that may be applied to reduce the taxpayer's "net tax," as defined in subdivision (a), for the taxable year shall be limited to an amount equal to the excess of the taxpayer's regular tax (as defined in Section 17062), determined by including income attributable to the disregarded business entity that generated the credit or credit carryover, over the taxpayer's regular tax (as defined in Section 17062), determined by excluding the income attributable to that disregarded business entity. No credit shall be allowed if the taxpayer's regular tax (as defined in Section 17062), determined by including the income attributable to the disregarded business entity, is less than the taxpayer's regular tax (as defined in Section 17062), determined by excluding the income attributable to the disregarded business entity.

(3) If the amount of a credit allowed pursuant to the section establishing the credit exceeds the amount allowable under this subdivision in any taxable year, the excess amount may be carried over to subsequent taxable years pursuant to subdivisions (c) and (d).

SEC. 3. Section 17941 of the Revenue and Taxation Code is amended to read:

17941. (a) For each taxable year beginning on or after January 1, 1997, every limited liability company doing business in this state (as defined in Section 23101) shall pay annually to this state a tax for the

privilege of doing business in this state in an amount equal to the applicable amount specified in paragraph (1) of subdivision (d) of Section 23153 for the taxable year.

(b) In addition to any limited liability company which is doing business in this state and is therefore subject to the tax imposed by subdivision (a), for each taxable year beginning on or after January 1, 1997, a limited liability company shall pay annually the tax prescribed in subdivision (a) if articles of organization have been accepted, or a certificate of registration has been issued, by the office of the Secretary of State. The tax shall be paid for each taxable year, or part thereof, until a certificate of cancellation of registration or of articles of organization is filed on behalf of the limited liability company with the office of the Secretary of State.

(c) The tax assessed under this section shall be due and payable on or before the 15th day of the fourth month of the taxable year.

(d) For purposes of this section, "limited liability company" means any organization that is formed by one or more persons under the law of this state, any other country, or any other state, as a "limited liability company" and that is not taxable as a corporation for California tax purposes.

SEC. 4. Section 18633.5 of the Revenue and Taxation Code is amended to read:

18633.5. (a) Every limited liability company which is classified as a partnership for California tax purposes that is doing business in this state, organized in this state, or registered with the Secretary of State shall file its return within three months and 15 days after the close of its taxable year, shall make a return for that taxable year, stating specifically the items of gross income and the deductions allowed by Part 10 (commencing with Section 17001). The return shall include the names, addresses, and taxpayer identification numbers of the persons, whether residents or nonresidents, who would be entitled to share in the net income if distributed and the amount of the distributive share of each person. The return shall contain or be verified by a written declaration that it is made under the penalties of perjury, signed by one of the limited liability company members.

(b) Each limited liability company required to file a return under subdivision (a) for any limited liability company taxable or income year shall, on or before the day on which the return for that taxable or income year was required to be filed, furnish to each person who holds an interest in that limited liability company at any time during that taxable year a copy of that information required to be shown on that return as may be required by forms and instructions prescribed by the Franchise Tax Board.

(c) Any person who holds an interest in a limited liability company as a nominee for another person shall do both of the following:

(1) Furnish to the limited liability company, in the manner prescribed by the Franchise Tax Board, the name, address, and taxpayer identification number of that person, and any other

information for that taxable or income year as the Franchise Tax Board may prescribe by forms and instructions.

(2) Furnish to that other person, in the manner prescribed by the Franchise Tax Board, the information provided by that limited liability company under subdivision (b).

(d) The provisions of Section 6031(d) of the Internal Revenue Code, relating to the separate statement of items of unrelated business taxable income, shall apply.

(e) (1) A limited liability company shall file with its return required under subdivision (a), in the form required by the Franchise Tax Board, the agreement of each nonresident member to file a return pursuant to Section 18501, to make timely payment of all taxes imposed on the member by this state with respect to the income of the limited liability company, and to be subject to personal jurisdiction in this state for purposes of the collection of income taxes, together with related interest and penalties, imposed on the member by this state with respect to the income of the limited liability company. If the limited liability company fails timely to file the agreements on behalf of each of its nonresident members, then the limited liability company shall, at the time set forth in subdivision (f), pay to this state on behalf of each nonresident member of whom an agreement has not been timely filed an amount equal to the highest marginal tax rate in effect under Section 17041 in the case of members which are individuals, estates, or trusts, and Section 23151 in the case of members which are corporations, multiplied by the amount of the member's distributive share of the income source to the state reflected on the limited liability company's return for the taxable period. A limited liability company shall be entitled to recover the payment made from the member on whose behalf the payment was made.

(2) If a limited liability company fails to attach the agreement or to timely pay the payment required by paragraph (1), the payment shall be considered the tax of the limited liability company for purposes of the penalty prescribed by Section 19132 and interest prescribed by Section 19101 for failure to timely pay tax. Payment of the penalty and interest imposed on the limited liability company for failure to timely pay the amount required by this subdivision shall extinguish the liability of a nonresident member for the penalty and interest for failure to make timely payment of all taxes imposed on that member by this state with respect to the income of the limited liability company.

(3) No penalty or interest shall be imposed on the limited liability company under paragraph (2) if the nonresident member timely files and pays all taxes imposed on the member by this state with respect to the income of the limited liability company.

(f) Any agreement of a nonresident member required to be filed pursuant to subdivision (e) shall be filed at either of the following times:

(1) The time the annual return is required to be filed pursuant to this section for the first taxable period for which the limited liability company became subject to tax pursuant to Chapter 1.6 (commencing with Section 23091).

(2) The time the annual return is required to be filed pursuant to this section for any taxable period in which the limited liability company had a nonresident member on whose behalf the agreement has not been previously filed.

(g) Any amount paid by the limited liability company to this state pursuant to paragraph (1) of subdivision (e) shall be considered to be a payment by the member on account of the income tax imposed by this state on the member for the taxable period.

(h) Every limited liability company that is classified as a corporation for California tax purposes shall be subject to the requirement to file a tax return under the provisions of Part 10.2 (commencing with Section 18401) and the applicable taxes imposed by Part 11 (commencing with Section 23001) including Section 23221 relating to the prepayment of the minimum tax to the Secretary of State.

(i) (1) Every limited liability company doing business in this state, organized in this state, or registered with the Secretary of State, that is disregarded pursuant to Section 23038 shall file a return that includes information necessary to verify its liability under Sections 17941 and 17942, provides its sole owner's name and taxpayer identification number, includes the consent of the owner to California tax jurisdiction, and includes other information necessary for the administration of this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001).

(2) If the owner's consent required under paragraph (1) is not included, the limited liability company shall pay on behalf of its owner an amount consistent with, and treated the same as, the amount to be paid under subdivision (e) by a limited liability company on behalf of a nonresident member for whom an agreement required by subdivision (e) is not attached to the return of the limited liability company.

(3) The return required under paragraph (1) shall be filed within three months and 15 days after the close of the taxable or income year of the owner.

(4) For limited liability companies disregarded pursuant to Section 23038, "taxable or income year of the owner" shall be substituted for "taxable year" in Sections 17941 and 17942.

SEC. 4.5. Section 18633.5 of the Revenue and Taxation Code is amended to read:

18633.5. (a) Every limited liability company which is classified as a partnership for California tax purposes that is doing business in this state, organized in this state, or registered with the Secretary of State shall file its return within three months and 15 days after the close of its taxable year, shall make a return for that taxable year, stating

specifically the items of gross income and the deductions allowed by Part 10 (commencing with Section 17001). The return shall include the names, addresses, and taxpayer identification numbers of the persons, whether residents or nonresidents, who would be entitled to share in the net income if distributed and the amount of the distributive share of each person. The return shall contain or be verified by a written declaration that it is made under the penalties of perjury, signed by one of the limited liability company members. In the case of a limited liability company not doing business in this state, and subject to the tax imposed by subdivision (b) of Section 17941 or 23091, the Franchise Tax Board shall, for returns required to be filed on or after January 1, 1998, prescribe the manner and extent to which the information identified in this subdivision shall be included with the return required by this subdivision.

(b) Each limited liability company required to file a return under subdivision (a) for any limited liability company taxable or income year shall, on or before the day on which the return for that taxable or income year was required to be filed, furnish to each person who holds an interest in that limited liability company at any time during that taxable or income year a copy of that information required to be shown on that return as may be required by forms and instructions prescribed by the Franchise Tax Board.

(c) Any person who holds an interest in a limited liability company as a nominee for another person shall do both of the following:

(1) Furnish to the limited liability company, in the manner prescribed by the Franchise Tax Board, the name, address, and taxpayer identification number of that person, and any other information for that taxable or income year as the Franchise Tax Board may prescribe by forms and instructions.

(2) Furnish to that other person, in the manner prescribed by the Franchise Tax Board, the information provided by that limited liability company under subdivision (b).

(d) The provisions of Section 6031(d) of the Internal Revenue Code, relating to the separate statement of items of unrelated business taxable income, shall apply.

(e) (1) A limited liability company shall file with its return required under subdivision (a), in the form required by the Franchise Tax Board, the agreement of each nonresident member to file a return pursuant to Section 18501, to make timely payment of all taxes imposed on the member by this state with respect to the income of the limited liability company, and to be subject to personal jurisdiction in this state for purposes of the collection of income taxes, together with related interest and penalties, imposed on the member by this state with respect to the income of the limited liability company. If the limited liability company fails to timely file the agreements on behalf of each of its nonresident members, then the limited liability company shall, at the time set forth in subdivision (f), pay to this state on behalf of each nonresident member of whom an

agreement has not been timely filed an amount equal to the highest marginal tax rate in effect under Section 17041, in the case of members which are individuals, estates, or trusts, and Section 23151, in the case of members which are corporations, multiplied by the amount of the member's distributive share of the income source to the state reflected on the limited liability company's return for the taxable period. A limited liability company shall be entitled to recover the payment made from the member on whose behalf the payment was made.

(2) If a limited liability company fails to attach the agreement or to timely pay the payment required by paragraph (1), the payment shall be considered the tax of the limited liability company for purposes of the penalty prescribed by Section 19132 and interest prescribed by Section 19101 for failure to timely pay the tax. Payment of the penalty and interest imposed on the limited liability company for failure to timely pay the amount required by this subdivision shall extinguish the liability of a nonresident member for the penalty and interest for failure to make timely payment of all taxes imposed on that member by this state with respect to the income of the limited liability company.

(3) No penalty or interest shall be imposed on the limited liability company under paragraph (2) if the nonresident member timely files and pays all taxes imposed on the member by this state with respect to the income of the limited liability company.

(f) Any agreement of a nonresident member required to be filed pursuant to subdivision (e) shall be filed at either of the following times:

(1) The time the annual return is required to be filed pursuant to this section for the first taxable period for which the limited liability company became subject to tax pursuant to Chapter 1.6 (commencing with Section 23091).

(2) The time the annual return is required to be filed pursuant to this section for any taxable period in which the limited liability company had a nonresident member on whose behalf an agreement described in subdivision (e) has not been previously filed.

(g) Any amount paid by the limited liability company to this state pursuant to paragraph (1) of subdivision (e) shall be considered to be a payment by the member on account of the income tax imposed by this state on the member for the taxable period.

(h) Every limited liability company that is classified as a corporation for California tax purposes shall be subject to the requirement to file a tax return under the provisions of Part 10.2 (commencing with Section 18401) and the applicable taxes imposed by Part 11 (commencing with Section 23001) including Section 23221 relating to the prepayment of the minimum tax to the Secretary of State.

(i) (1) Every limited liability company doing business in this state, organized in this state, or registered with the Secretary of State,

that is disregarded pursuant to Section 23038 shall file a return that includes information necessary to verify its liability under Sections 17941 and 17942, provides its sole owner's name and taxpayer identification number, includes the consent of the owner to California tax jurisdiction, and includes other information necessary for the administration of this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001).

(2) If the owner's consent required under paragraph (1) is not included, the limited liability company shall pay on behalf of its owner an amount consistent with, and treated the same as, the amount to be paid under subdivision (e) by a limited liability company on behalf of a nonresident member for whom an agreement required by subdivision (e) is not attached to the return of the limited liability company.

(3) The return required under paragraph (1) shall be filed within three months and 15 days after the close of the taxable or income year of the owner.

(4) For limited liability companies disregarded pursuant to Section 23038, "taxable or income year of the owner" shall be substituted for "taxable year" in Sections 17941 and 17942.

SEC. 5. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) (1) The term "tax" includes any of the following:

(A) The tax imposed under Chapter 2 (commencing with Section 23101).

(B) The tax imposed under Chapter 3 (commencing with Section 23501).

(C) The tax on unrelated business taxable income, imposed under Section 23731.

(D) The tax on S corporations imposed under Section 23802.

(2) The term "tax" does not include any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.

(b) For purposes of Article 5 (commencing with Section 18661) of Chapter 2, Article 3 (commencing with Section 19031) of Chapter 4, Article 6 (commencing with Section 19101) of Chapter 4, and Chapter 7 (commencing with Section 19501) of Part 10.2, and for purposes of Sections 18601, 19001, and 19005, the term "tax" shall also include all of the following:

(1) The tax on limited partnerships, imposed under Section 17935 or Section 23081, the tax on limited liability companies, imposed under Section 17941 or Section 23091, and the tax on registered limited liability partnerships and foreign limited liability partnerships imposed under Section 17948 or Section 23097.

(2) The alternative minimum tax imposed under Chapter 2.5 (commencing with Section 23400).

(3) The tax on built-in gains of S corporations, imposed under Section 23809.

(4) The tax on excess passive investment income of S corporations, imposed under Section 23811.

(c) Notwithstanding any other provision of this part, credits shall be allowed against the "tax" in the following order:

(1) Credits that do not contain carryover provisions.

(2) Credits that, when the credit exceeds the "tax," allow the excess to be carried over to offset the "tax" in succeeding taxable years. The order of credits within this paragraph shall be determined by the Franchise Tax Board.

(3) The minimum tax credit allowed by Section 23453.

(4) Credits for taxes withheld under Section 18662.

(d) Notwithstanding any other provision of this part, each of the following shall be applicable:

(1) No credit shall reduce the "tax" below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455), except the following credits, but only after allowance of the credit allowed by Section 23453:

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by former Section 23601.4 (relating to solar energy).

(C) The credit allowed by Section 23601.5 (relating to solar energy).

(D) The credit allowed by Section 23609 (relating to research expenditures).

(E) The credit allowed by Section 23609.5 (relating to clinical testing expenses).

(F) The credit allowed by Section 23610.5 (relating to low-income housing).

(G) The credit allowed by former Section 23612 (relating to sales and use tax credit).

(H) The credit allowed by Section 23612.2 (relating to enterprise zone sales or use tax credit).

(I) The credit allowed by Section 23612.6 (relating to Los Angeles Revitalization Zone sales tax credit).

(J) The credit allowed by former Section 23622 (relating to enterprise zone hiring credit).

(K) The credit allowed by Section 23622.7 (relating to enterprise zone hiring credit).

(L) The credit allowed by former Section 23623 (relating to program area hiring credit).

(M) For each income year beginning on or after January 1, 1994, the credit allowed by Section 23623.5 (relating to Los Angeles Revitalization Zone hiring credit).

(N) The credit allowed by Section 23625 (relating to Los Angeles Revitalization Zone hiring credit).

(O) The credit allowed by Section 23649 (relating to qualified property).

(2) No credit against the tax shall reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).

(e) Any credit which is partially or totally denied under subdivision (d) shall be allowed to be carried over to reduce the "tax" in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.

(f) Unless otherwise provided, any remaining carryover from a credit that has been repealed or made inoperative shall continue to be allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(g) Unless otherwise provided, if two or more taxpayers share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to its respective share of the costs paid or incurred.

(h) Unless otherwise provided, in the case of an S corporation, any credit allowed by this part shall be computed at the S corporation level, and any limitation on the expenses qualifying for the credit or limitation upon the amount of the credit shall be applied to the S corporation and to each shareholder.

(i) (1) With respect to any taxpayer that directly or indirectly owns an interest in a business entity that is disregarded for tax purposes pursuant to Section 23038 and any regulations thereunder, the amount of any credit or credit carryforward allowable for any income year attributable to the disregarded business entity shall be limited in accordance with paragraphs (2) and (3).

(2) The amount of any credit otherwise allowed under this part, including any credit carryover from prior years, that may be applied to reduce the taxpayer's "tax," as defined in subdivision (a), for the income year shall be limited to an amount equal to the excess of the taxpayer's regular tax (as defined in Section 23455), determined by including income attributable to the disregarded business entity that generated the credit or credit carryover, over the taxpayer's regular tax (as defined in Section 23455), determined by excluding the income attributable to that disregarded business entity. No credit shall be allowed if the taxpayer's regular tax (as defined in Section 23455), determined by including the income attributable to the disregarded business entity is less than the taxpayer's regular tax (as defined in Section 23455), determined by excluding the income attributable to the disregarded business entity.

(3) If the amount of a credit allowed pursuant to the section establishing the credit exceeds the amount allowable under this subdivision in any income year, the excess amount may be carried over to subsequent income years pursuant to subdivisions (d), (e) and (f).

SEC. 6. Section 23038 of the Revenue and Taxation Code is amended to read:

23038. (a) "Corporation" includes every corporation except corporations expressly exempt from the tax by this part or the Constitution of this state.

(b) (1) For the purposes of the tax imposed under Chapter 3 (commencing with Section 23501), "corporation" also includes associations (including nonprofit associations that perform services, borrow money or own property), other than banking associations, and Massachusetts or business trusts. For the purposes of this part, a Massachusetts or business trust includes every business organization consisting essentially of an arrangement whereby property is conveyed to one, or more than one, trustee for purposes other than the mere conservation of assets, collecting and disbursing of fixed or periodic income, or the securing of an obligation. This paragraph shall apply for income or taxable years beginning before January 1, 1997.

(2) (A) For the purposes of the tax imposed under Chapter 3 (commencing with Section 23501), "corporation" also includes associations (other than banking associations but including nonprofit associations that perform services, borrow money or own property), business trusts, and other business entities classified as associations.

(B) (i) For purposes of the preceding subparagraph, the classification of a business entity (including a business trust) as an association taxable as a corporation (under Chapter 3 (commencing with Section 23501)) shall be determined under regulations of the Franchise Tax Board, which shall be consistent with federal regulations as in effect January 1, 1997, that classify a business entity as a partnership or an association taxable as a corporation or disregard the separate existence of certain business entities for tax purposes.

(ii) The classification of an eligible business entity as a partnership or an association taxable as a corporation for purposes of this part, Part 10 (commencing with Section 17001), and Part 10.2 (commencing with Section 18401) shall be the same as the classification of the entity for federal tax purposes.

(iii) If the separate existence of an eligible business entity is disregarded for federal tax purposes, the separate existence of that business entity shall be disregarded for purposes of this part, Part 10 (commencing with Section 17001), and Part 10.2 (commencing with Section 18401), other than Section 17941 (relating to the tax of a limited liability company), Section 17942 (relating to the fee of a limited liability company), Section 18633.5 (relating to the return of a limited liability company), and Sections 17039 and 23036 (relating to tax credits).

(C) Notwithstanding clauses (ii) and (iii) of subparagraph (B), an eligible business entity that, for any income year beginning within the 60-month period preceding January 1, 1997, was properly classified as an association taxable as a corporation for California tax purposes shall continue to be an association taxable as a corporation until it elects, under regulations issued pursuant to subparagraph

(B), to be classified or disregarded the same as the entity is classified or disregarded for federal tax purposes. The preceding sentence shall not apply to any entity that, during the 60-month period preceding January 1, 1997, was not doing business in this state, did not derive income from sources within this state, and had no owner who was a resident of this state.

(D) This paragraph shall apply for income or taxable years beginning on and after January 1, 1997.

(c) In addition to the above, for purposes of the tax imposed under Chapter 2 (commencing with Section 23101) for the purpose of exercising its franchise within this state, "corporation" also includes any limited liability company that is classified as an association for California tax purposes.

(d) "Corporation" includes any "corporation" operated by any receiver, liquidator, referee, trustee or other officers or agents appointed by any court, or an assignee for the benefit of creditors.

"Corporation" includes any professional corporation incorporated pursuant to Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code.

(e) Notwithstanding the above, "corporation" also includes a trust organized and operated exclusively for purposes contained in Section 23701d.

(f) No provision of the act adding this subdivision shall be construed to alter existing law with respect to the civil liability of a limited liability company or its members.

SEC. 6.5. Section 23038 of the Revenue and Taxation Code is amended to read:

23038. (a) "Corporation" includes every corporation except:

(1) Banks.

(2) Corporations expressly exempt from the tax by this part or the Constitution of this state.

(b) (1) For the purposes of the tax imposed under Chapter 3 (commencing with Section 23501), "corporation" also includes associations (including nonprofit associations that perform services, borrow money or own property), other than banking associations, and Massachusetts or business trusts. For the purposes of this part, a Massachusetts or business trust includes every business organization consisting essentially of an arrangement whereby property is conveyed to one, or more than one, trustee for purposes other than the mere conservation of assets, collecting and disbursing of fixed or periodic income, or the securing of an obligation. This paragraph shall apply for income or taxable years beginning before January 1, 1997.

(2) (A) For the purposes of the tax imposed under Chapter 3 (commencing with Section 23501), "corporation" also includes associations (other than banking associations but including nonprofit associations that perform services, borrow money, or own property), business trusts, and other business entities classified as associations.

(B) (i) For purposes of the preceding subparagraph, the classification of a business entity (including a business trust) as an association taxable as a corporation (under Chapter 3 (commencing with Section 23501)) shall be determined under regulations of the Franchise Tax Board, which shall be consistent with federal regulations as in effect January 1, 1997, that classify a business entity as a partnership or an association taxable as a corporation or disregard the separate existence of certain business entities for tax purposes.

(ii) The classification of an eligible business entity as a partnership or an association taxable as a corporation for purposes of this part, Part 10 (commencing with Section 17001), and Part 10.2 (commencing with Section 18401) shall be the same as the classification of the entity for federal tax purposes.

(iii) If the separate existence of an eligible business entity is disregarded for federal tax purposes, the separate existence of that business entity shall be disregarded for purposes of this part, Part 10 (commencing with Section 17001), and Part 10.2 (commencing with Section 18401), other than Section 17941 (relating to the tax of a limited liability company), Section 17942 (relating to the fee of a limited liability company), Section 18633.5 (relating to the return of a limited liability company), and Sections 17039 and 23036 (relating to tax credits).

(C) Notwithstanding clauses (ii) and (iii) of subparagraph (B), an eligible business entity that, for any income year beginning within the 60-month period preceding January 1, 1997, was properly classified as an association taxable as a corporation for California tax purposes shall continue to be an association taxable as a corporation until it elects, under regulations issued pursuant to subparagraph (B), to be classified or disregarded the same as the entity is classified or disregarded for federal tax purposes. The preceding sentence shall not apply to any entity which, during the 60-month period preceding January 1, 1997, was not doing business in this state, did not derive income from sources within this state, and had no owner who was a resident of this state.

(D) This paragraph shall apply for income or taxable years beginning on and after January 1, 1997.

(c) In addition to the above, for purposes of the tax imposed under Chapter 2 (commencing with Section 23101) for the purpose of exercising its franchise within this state, "corporation" also includes any limited liability company that is classified as an association for California tax purposes.

(d) "Corporation" includes any "corporation" operated by any receiver, liquidator, referee, trustee or other officers or agents appointed by any court, or an assignee for the benefit of creditors.

"Corporation" includes any professional corporation incorporated pursuant to Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code.

(e) Notwithstanding the above, "corporation" also includes a trust organized and operated exclusively for purposes contained in Section 23701d.

(f) No provision of the act adding this subdivision shall be construed to alter existing law with respect to the civil liability of a limited liability company or its members.

SEC. 7. Section 4.5 of this bill incorporates amendments to Section 18633.5 of the Revenue and Taxation Code proposed by both this bill and SB 1106. 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 18633.5 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 1106, in which case Section 18633.5 of the Revenue and Taxation Code as amended by SB 1106 shall remain operative only until the operative date of this bill, at which time Section 4.5 of this bill shall become operative, and Section 4 of this bill shall not become operative.

SEC. 8. (a) Section 6 of this bill incorporates amendments to Section 23038 of the Revenue and Taxation Code proposed by both this bill and AB 1040. 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 23038 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 1040, in which case Section 6.5 of this bill shall remain operative only until the effective date of AB 1040, at which time Section 6 of this bill shall become operative.

(b) If Section 6 of this bill becomes operative, both of the following shall apply:

(1) The amendments made to Section 23038 of the Revenue and Taxation Code by AB 1040 shall be applied from the original effective date of the act enacting Section 23038 of the Revenue and Taxation Code. The Legislature finds and declares that the amendments made to Section 23038 of the Revenue and Taxation Code by AB 1040 are consistent with the intent of the act enacting that section.

(2) The amendments made to Section 23038 of the Revenue and Taxation Code only by this bill shall be operative for income years beginning on or after January 1, 1997.

SEC. 9. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 609

An act to add Section 7073.8 to the Government Code, and to amend Sections 17053.74 and 23622.7 of, to add Sections 17053.47 and 23622.8 to, and to repeal and amend Sections 17053.70, 17053.75, 17235, 23612.2, and 24384.5 of, the Revenue and Taxation Code, relating to economic development.

[Approved by Governor October 1, 1997. Filed with
Secretary of State October 3, 1997.]

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

SECTION 1. Section 7073.8 is added to the Government Code, to read:

7073.8. (a) The agency shall designate up to two Manufacturing Enhancement Areas, as defined by Section 17053.47, requested by the governing boards of cities each of which shall meet at least the following criteria:

(1) The unemployment rate in the county in which the applicant is located has been at least three times the state average from 1990 to 1995, inclusive.

(2) The applicant city is, or portions of the city are, designated a federal enterprise community or empowerment zone pursuant to Subchapter U (commencing with Section 1391) of Chapter 1 of Subtitle A of Title 26 of the United States Code.

(3) The applicant city is located in a Border Environment Cooperation Commission region as specified in Section 3473 of Title 19 of the United States Code.

(4) At least one of the following:

(A) The designated area has grown by less than 5 percent in population per year for each of the two years preceding the application date.

(B) The median household income for the designated area is under twenty-five thousand dollars ($25,000) per year.

(C) The designated area has a population of under 20,000 persons according to the 1990 federal census.

(D) The designated area is located in a rural community.

(5) An audit of the program shall be made at the end of the 5th and 10th year of its operation by the Trade and Commerce Agency with the cooperation of the local governing board. The audit shall be used to determine how effective the designation has been in attracting manufacturing facilities and creating new employment opportunities. Continuation of the designation is contingent on evidence of success of the program.

(b) For purposes of applying any provision of the Revenue and Taxation Code, any Manufacturing Enhancement Area designated pursuant to this section shall not be considered an enterprise zone designated pursuant to this chapter.

(c) The designation as a Manufacturing Enhancement Area pursuant to this section shall be binding for a period of 15 years, commencing January 1, 1998.

SEC. 2. Section 17053.47 is added to the Revenue and Taxation Code, to read:

17053.47. (a) For each taxable year beginning on or after January 1, 1998, there shall be allowed a credit against the "net tax" (as

defined in Section 17039) to a qualified taxpayer for hiring a qualified disadvantaged individual during the taxable year for employment in the Manufacturing Enhancement Area. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of the qualified wages in the first year of employment.

(2) Forty percent of the qualified wages in the second year of employment.

(3) Thirty percent of the qualified wages in the third year of employment.

(4) Twenty percent of the qualified wages in the fourth year of employment.

(5) Ten percent of the qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) That portion of wages paid or incurred by the qualified taxpayer during the taxable year to qualified disadvantaged individuals that does not exceed 150 percent of the minimum wage.

(B) The total amount of qualified wages which may be taken into account for purposes of claiming the credit allowed under this section shall not exceed two million dollars ($2,000,000) per taxable year.

(C) Wages received during the 60-month period beginning with the day the qualified disadvantaged individual commences employment with the qualified taxpayer.

(D) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the Manufacturing Enhancement Area expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the qualified taxpayer within the Manufacturing Enhancement Area within the 60-month period prior to the Manufacturing Enhancement Area expiration date shall continue to qualify for the credit under this section after the Manufacturing Enhancement Area expiration date, in accordance with all provisions of this section applied as if the Manufacturing Enhancement Area designation were still in existence and binding.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Manufacturing Enhancement Area" means an area designated pursuant to Section 7073.8 of the Government Code according to the procedures of Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(4) "Manufacturing Enhancement Area expiration date" means the date the Manufacturing Enhancement Area designation expires, is no longer binding, or becomes inoperative.

(5) "Qualified disadvantaged individual" means an individual who satisfies all of the following requirements:

(A) (i) At least 90 percent of whose services for the qualified taxpayer during the taxable year are directly related to the conduct of the qualified taxpayer's trade or business located in a Manufacturing Enhancement Area.

(ii) Who performs at least 50 percent of his or her services for the qualified taxpayer during the taxable year in the Manufacturing Enhancement Area.

(B) Who is hired by the qualified taxpayer after the designation of the area as a Manufacturing Enhancement Area in which the individual's services were primarily performed.

(C) Who is any of the following immediately preceding the individual's commencement of employment with the qualified taxpayer:

(i) An individual who has been determined eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.).

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 as provided pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any individual who has been certified eligible by the Employment Development Department under the federal Targeted Jobs Tax Credit Program, whether or not this program is in effect.

(6) "Qualified taxpayer" means any taxpayer engaged in a trade or business within a Manufacturing Enhancement Area designated pursuant to Section 7073.8 of the Government Code and who meets both of the following requirements:

(A) Is engaged in those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(B) At least 50 percent of the qualified taxpayer's work force hired after the designation of the Manufacturing Enhancement Area is composed of individuals who, at the time of hire, are residents of the county in which the Manufacturing Enhancement Area is located.

(C) Of this percentage of local hires, at least 30 percent shall be qualified disadvantaged individuals.

(c) (1) For purposes of this section, all of the following apply:

(A) All employees of trades or businesses that are under common control shall be treated as employed by a single qualified taxpayer.

(B) The credit (if any) allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit and shall be allocated in that manner.

(C) Principles that apply in the case of controlled groups of corporations, as specified in subdivision (d) of Section 23622.7, shall apply with respect to determining employment.

(2) If a qualified taxpayer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (d)) for any calendar year ending after that acquisition, the employment relationship between a qualified disadvantaged individual and a qualified taxpayer shall not be treated as terminated if the qualified disadvantaged individual continues to be employed in that trade or business.

(d) (1) If the employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (b) is terminated by the qualified taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that qualified disadvantaged individual completes 90 days of employment with the qualified taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that qualified disadvantaged individual.

(2) (A) Paragraph (1) does not apply to any of the following:

(i) A termination of employment of a qualified disadvantaged individual who voluntarily leaves the employment of the qualified taxpayer.

(ii) A termination of employment of a qualified disadvantaged individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of a qualified disadvantaged individual, if it is determined under the applicable employment compensation laws that the termination was due to the misconduct of that individual.

(iv) A termination of employment of a qualified disadvantaged individual due to a substantial reduction in the trade or business operations of the qualified taxpayer.

(v) A termination of employment of a qualified disadvantaged individual, if that individual is replaced by other qualified disadvantaged individuals so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the qualified taxpayer and a qualified disadvantaged individual shall not be treated as terminated by reason of a mere

change in the form of conducting the trade or business of the qualified taxpayer, if the qualified disadvantaged individual continues to be employed in that trade or business and the qualified taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(e) In the case of an estate or trust, both of the following apply:

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated (for purposes of this part) as the employer with respect to those wages.

(f) The credit shall be reduced by the credit allowed under Section 17053.7. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the qualified taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (g) or (h).

(g) In the case where the credit otherwise allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit that exceeds the "net tax" may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(h) (1) The amount of credit otherwise allowed under this section, including prior year credit carryovers, that may reduce the "net tax" for the taxable year shall not exceed the amount of tax that would be imposed on the qualified taxpayer's business income attributed to a Manufacturing Enhancement Area determined as if that attributed income represented all of the net income of the qualified taxpayer subject to tax under this part.

(2) The amount of attributed income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section as follows:

(A) Income shall be apportioned to a Manufacturing Enhancement Area by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) "The Manufacturing Enhancement Area" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (g).

(i) (1) In the case where "qualified wages" qualify for a credit under more than one section in this part, the qualified taxpayer shall make an election as to which section applies to those qualified wages.

(2) Any election made under this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

SEC. 2.5. Section 17053.47 is added to the Revenue and Taxation Code, to read:

17053.47. (a) For each taxable year beginning on or after January 1, 1998, there shall be allowed a credit against the "net tax" (as defined in Section 17039) to a qualified taxpayer for hiring a qualified disadvantaged individual during the taxable year for employment in the Manufacturing Enhancement Area. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of the qualified wages in the first year of employment.

(2) Forty percent of the qualified wages in the second year of employment.

(3) Thirty percent of the qualified wages in the third year of employment.

(4) Twenty percent of the qualified wages in the fourth year of employment.

(5) Ten percent of the qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) That portion of wages paid or incurred by the qualified taxpayer during the taxable year to qualified disadvantaged individuals that does not exceed 150 percent of the minimum wage.

(B) The total amount of qualified wages which may be taken into account for purposes of claiming the credit allowed under this section shall not exceed two million dollars ($2,000,000) per taxable year.

(C) Wages received during the 60-month period beginning with the day the qualified disadvantaged individual commences employment with the taxpayer.

(D) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the Manufacturing Enhancement Area expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the qualified taxpayer within the Manufacturing Enhancement Area within the 60-month period prior to the Manufacturing Enhancement Area expiration date shall continue to qualify for the credit under this section after the Manufacturing Enhancement Area expiration date, in accordance with all provisions of this section applied as if the Manufacturing Enhancement Area designation were still in existence and binding.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1

(commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Manufacturing Enhancement Area" means an area designated pursuant to Section 7073.8 of the Government Code according to the procedures of Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(4) "Manufacturing Enhancement Area expiration date" means the date the Manufacturing Enhancement Area designation expires, is no longer binding, or becomes inoperative.

(5) "Qualified disadvantaged individual" means an individual who satisfies all of the following requirements:

(A) (i) At least 90 percent of whose services for the qualified taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in a Manufacturing Enhancement Area.

(ii) Who performs at least 50 percent of his or her services for the qualified taxpayer during the taxable year in the Manufacturing Enhancement Area.

(B) Who is hired by the qualified taxpayer after the designation of the area as a Manufacturing Enhancement Area in which the individual's services were primarily performed.

(C) Who is any of the following immediately preceding the individual's commencement of employment with the qualified taxpayer:

(i) An individual who has been determined eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.).

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 as provided pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any individual who has been certified eligible by the Employment Development Department under the federal Targeted Jobs Tax Credit Program, whether or not this program is in effect.

(6) "Qualified taxpayer" means any taxpayer engaged in a trade or business within a Manufacturing Enhancement Area designated pursuant to Section 7073.8 of the Government Code and who meets both of the following requirements:

(A) Is engaged in those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(B) At least 30 percent of the qualified taxpayer's work force hired after the designation of the Manufacturing Enhancement Area is composed of qualified disadvantaged individuals who, at the time of hire, are residents of the county in which the Manufacturing Enhancement Area is located.

(c) (1) For purposes of this section, all of the following apply:

(A) All employees of trades or businesses that are under common control shall be treated as employed by a single qualified taxpayer.

(B) The credit (if any) allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit and shall be allocated in that manner.

(C) Principles that apply in the case of controlled groups of corporations, as specified in subdivision (d) of Section 23622.7, shall apply with respect to determining employment.

(2) If a qualified taxpayer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (d)) for any calendar year ending after that acquisition, the employment relationship between a qualified disadvantaged individual and a qualified taxpayer shall not be treated as terminated if the qualified disadvantaged individual continues to be employed in that trade or business.

(d) (1) If the employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (b) is terminated by the qualified taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that qualified disadvantaged individual completes 90 days of employment with the qualified taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that qualified disadvantaged individual.

(2) (A) Paragraph (1) does not apply to any of the following:

(i) A termination of employment of a qualified disadvantaged individual who voluntarily leaves the employment of the qualified taxpayer.

(ii) A termination of employment of a qualified disadvantaged individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the qualified taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of a qualified disadvantaged individual, if it is determined under the applicable employment compensation laws that the termination was due to the misconduct of that individual.

(iv) A termination of employment of a qualified disadvantaged individual due to a substantial reduction in the trade or business operations of the qualified taxpayer.

(v) A termination of employment of a qualified disadvantaged individual, if that individual is replaced by other qualified disadvantaged individuals so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the qualified taxpayer and a qualified disadvantaged individual shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the qualified taxpayer, if the qualified disadvantaged individual continues to be employed in that trade or business and the qualified taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(e) In the case of an estate or trust, both of the following apply:

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated (for purposes of this part) as the employer with respect to those wages.

(f) The credit shall be reduced by the credit allowed under Section 17053.7. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the qualified taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (g) or (h).

(g) In the case where the credit otherwise allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit that exceeds the "net tax" may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(h) (1) The amount of credit otherwise allowed under this section, including prior year credit carryovers, that may reduce the "net tax" for the taxable year shall not exceed the amount of tax that would be imposed on the qualified taxpayer's business income attributed to a Manufacturing Enhancement Area determined as if that attributed income represented all of the net income of the qualified taxpayer subject to tax under this part.

(2) The amount of attributed income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section as follows:

(A) Income shall be apportioned to a Manufacturing Enhancement Area by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) "The Manufacturing Enhancement Area" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (g).

(i) If the qualified taxpayer is allowed a credit pursuant to this section for qualified wages paid or incurred, only one credit shall be allowed under this part with respect to any wage consisting in whole or in part of those qualified wages.

SEC. 3. Section 17053.70 of the Revenue and Taxation Code, as added by Chapter 953 of the Statutes of 1996, is repealed.

SEC. 4. Section 17053.70 of the Revenue and Taxation Code, as added by Chapter 955 of the Statutes of 1996, is amended to read:

17053.70. (a) There shall be allowed as a credit against the "net tax" (as defined in Section 17039) for the taxable year an amount equal to the sales or use tax paid or incurred during the taxable year by the taxpayer in connection with the taxpayer's purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means a person or entity engaged in a trade or business within an enterprise zone.

(2) "Qualified property" means:

(A) Any of the following:

(i) Machinery and machinery parts used for fabricating, processing, assembling, and manufacturing.

(ii) Machinery and machinery parts used for the production of renewable energy resources.

(iii) Machinery and machinery parts used for either of the following:

(I) Air pollution control mechanisms.

(II) Water pollution control mechanisms.

(B) The total cost of qualified property purchased and placed in service in any taxable year that may be taken into account by any taxpayer for purposes of claiming this credit shall not exceed one million dollars ($1,000,000).

(C) The qualified property is used by the taxpayer exclusively in an enterprise zone.

(D) The qualified property is purchased and placed in service before the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(3) "Enterprise zone" means the area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(c) If the taxpayer has purchased property upon which a use tax has been paid or incurred, the credit provided by this section shall be allowed only if qualified property of a comparable quality and price is not timely available for purchase in this state.

(d) In the case where the credit otherwise allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit that exceeds the "net tax" may be carried over and added to the credit, if any, in succeeding taxable years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the qualified property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the taxpayer's purchase of qualified property.

(f) (1) The amount of the credit otherwise allowed under this section and Section 17053.74, including any credit carryover from prior years, that may reduce the "net tax" for the taxable year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section by substituting "the enterprise zone" for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (d).

SEC. 5. Section 17053.74 of the Revenue and Taxation Code is amended to read:

17053.74. (a) There shall be allowed a credit against the "net tax" (as defined in Section 17039) to a taxpayer who employs a qualified employee in an enterprise zone during the taxable year. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) That portion of wages paid or incurred by the taxpayer during the taxable year to qualified employees that does not exceed 150 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the day the employee commences employment with the taxpayer.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the taxpayer within the enterprise zone within the 60-month period prior to the zone expiration date shall continue to qualify for the credit under this section after the zone expiration date, in accordance with all provisions of this section applied as if the enterprise zone designation were still in existence and binding.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(4) (A) "Qualified employee" means an individual who meets all of the following requirements:

(i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone.

(ii) Performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise zone.

(iii) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise zone.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act, or its successor.

(II) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, or its successor.

(III) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an economically disadvantaged individual 14 years of age or older.

(IV) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a dislocated worker who meets any of the following:

Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has

exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of the closure or layoff.

Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

Is a seasonal or migrant worker who experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

Has been terminated or laid off, or has received a notice of termination or layoff, as a consequence of compliance with the Clean Air Act.

(V) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a disabled individual who is eligible for or enrolled in, or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(VI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilty.

(VII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for or a recipient of any of the following:

Federal Supplemental Security Income benefits.

Aid to Families with Dependent Children.

Food stamps.

State and local general assistance.

(VIII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of

a federally recognized Indian tribe, band, or other group of Native American descent.

(IX) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a resident of a targeted employment area, as defined in Section 7072 of the Government Code.

(X) An employee who qualified the taxpayer for the enterprise zone hiring credit under former Section 17053.8 or the program area hiring credit under former Section 17053.11.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible under the federal Targeted Jobs Tax Credit Program.

(5) "Taxpayer" means a person or entity engaged in a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of the Government Code.

(c) The taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department, as permitted by federal law, or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification which provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The Employment Development Department may provide preliminary screening and referral to a certifying agency. The Employment Development Department shall develop a form for this purpose.

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(d) (1) For purposes of this section:

(A) All employees of trades or businesses, which are not incorporated, that are under common control shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit, and shall be allocated in that manner.

(C) Principles that apply in the case of controlled groups of corporations, as specified in subdivision (d) of Section 23622.7, shall apply with respect to determining employment.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (e)) for any calendar year ending after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as

terminated if the employee continues to be employed in that trade or business.

(e) (1) If the employment of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that employee.

(iii) A termination of employment of a qualified employee, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that employee is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and a qualified employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the qualified employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(f) In the case of an estate or trust, both of the following apply:

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated, for purposes of this part, as the employer with respect to those wages.

(g) For purposes of this section, "enterprise zone" means an area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(h) The credit allowable under this section shall be reduced by the credit allowed under Sections 17053.10, 17053.17 and 17053.46 claimed for the same employee. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (i) or (j).

(i) In the case where the credit otherwise allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit that exceeds the "net tax" may be carried over and added to the credit, if any, in succeeding taxable years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 17053.70, including any credit carryover from prior years, that may reduce the "net tax" for the taxable year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section by substituting "the enterprise zone" for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (i).

SEC. 5.5. Section 17053.74 of the Revenue and Taxation Code is amended to read:

17053.74. (a) There shall be allowed a credit against the "net tax" (as defined in Section 17039) to a taxpayer who employs a qualified employee in an enterprise zone during the taxable year. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) (i) Except as provided in clause (ii), that portion of wages paid or incurred by the taxpayer during the taxable year to qualified employees that does not exceed 150 percent of the minimum wage.

(ii) For up to 1,350 qualified employees who are employed by the taxpayer in the Long Beach Enterprise Zone in aircraft manufacturing activities described in Codes 3721 to 3728, inclusive, and Code 3812 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, "qualified wages" means that portion of hourly wages that does not exceed 202 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the day the employee commences employment with the taxpayer.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the taxpayer within the enterprise zone within the 60-month period prior to the zone expiration date shall continue to qualify for the credit under this section after the zone expiration date, in accordance with all provisions of this section applied as if the enterprise zone designation were still in existence and binding.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(4) (A) "Qualified employee" means an individual who meets all of the following requirements:

(i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone.

(ii) Performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise zone.

(iii) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise zone.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act, or its successor.

(II) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, or its successor.

(III) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an economically disadvantaged individual 14 years of age or older.

(IV) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a dislocated worker who meets any of the following:

Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of the closure or layoff.

Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

Is a seasonal or migrant worker who experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

Has been terminated or laid off, or has received a notice of termination or layoff, as a consequence of compliance with the Clean Air Act.

(V) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a disabled individual who is eligible for or enrolled in, or has completed a state rehabilitation plan or is a service-connected disabled veteran,

veteran of the Vietnam era, or veteran who is recently separated from military service.

(VI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilt.

(VII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for or a recipient of any of the following:

Federal Supplemental Security Income benefits.

Aid to Families with Dependent Children.

Food stamps.

State and local general assistance.

(VIII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(IX) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a resident of a targeted employment area, as defined in Section 7072 of the Government Code.

(X) An employee who qualified the taxpayer for the enterprise zone hiring credit under former Section 17053.8 or the program area hiring credit under former Section 17053.11.

(XI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a targeted group, as defined in Section 51(d) of the Internal Revenue Code, or its successor.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible as a member of a targeted group under the Work Opportunity Tax Credit (Section 51 of the Internal Revenue Code), or its successor.

(5) "Taxpayer" means a person or entity engaged in a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of the Government Code.

(c) The taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department, as permitted by federal law, or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification which provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The Employment Development Department may provide preliminary screening and referral to a certifying agency. The Employment Development Department shall develop a form for this purpose.

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(d) (1) For purposes of this section:

(A) All employees of trades or businesses, which are not incorporated, that are under common control shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit, and shall be allocated in such manner.

(C) Principles that apply in the case of controlled groups of corporations, as specified in subdivision (d) of Section 23622.7, shall apply with respect to determining employment.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (e)) for any calendar year ending after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(e) (1) If the employment of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that employee.

(iii) A termination of employment of a qualified employee, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that employee is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and a qualified employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the qualified employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(f) In the case of an estate or trust, both of the following apply:

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated, for purposes of this part, as the employer with respect to those wages.

(g) For purposes of this section, "enterprise zone" means an area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(h) The credit allowable under this section shall be reduced by the credit allowed under Sections 17053.10, 17053.17 and 17053.46 claimed for the same employee. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (i) or (j).

(i) In the case where the credit otherwise allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit that exceeds the "net tax" may be carried over and added to the credit, if any, in succeeding taxable years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 17053.70, including any credit carryover from prior years, that may reduce the "net tax" for the taxable year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be determined in accordance with the provisions of Chapter

17 (commencing with Section 25101) of Part 11, modified for purposes of this section by substituting "the enterprise zone" for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (i).

(k) The changes made to this section by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 1997.

SEC. 6. Section 17053.75 of the Revenue and Taxation Code, as added by Chapter 953 of the Statutes of 1996, is repealed.

SEC. 7. Section 17053.75 of the Revenue and Taxation Code, as added by Chapter 955 of the Statutes of 1996, is amended to read:

17053.75. (a) There shall be allowed as a credit against the "net tax" (as defined by Section 17039) for the taxable year an amount equal to five percent of the qualified wages received by the taxpayer during the taxable year.

(b) For purposes of this section:

(1) "Qualified employee" means a taxpayer who meets both of the following:

(A) Is described in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b) of Section 17053.74.

(B) Is not an employee of the federal government or of this state or of any political subdivision of this state.

(2) (A) "Qualified wages" means "wages," as defined in subsection (b) of Section 3306 of the Internal Revenue Code, attributable to services performed for an employer with respect to whom the taxpayer is a qualified employee in an amount that does not exceed one and one-half times the dollar limitation specified in that subsection.

(B) "Qualified wages" does not include any compensation received from the federal government or this state or any political subdivision of this state.

(C) "Qualified wages" does not include any wages received on or after the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(3) "Enterprise zone" means any area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(c) For each dollar of income received by the taxpayer in excess of qualified wages, as defined in this section, the credit shall be reduced by nine cents ($0.09).

(d) The amount of the credit allowed by this section in any taxable year shall not exceed the amount of tax that would be imposed on the taxpayer's income attributable to employment within the enterprise zone as if that income represented all of the income of the taxpayer subject to tax under this part.

SEC. 7.5. Section 17053.75 of the Revenue and Taxation Code is amended to read:

17053.75. (a) There shall be allowed as a credit against the "net tax" (as defined by Section 17039) for the taxable year an amount equal to five percent of the qualified wages received by the taxpayer during the taxable year.

(b) For purposes of this section:

(1) "Qualified employee" means a taxpayer who meets both of the following:

(A) Is described in clauses (i) and (ii) of subparagraph (A) of paragraph (4) of subdivision (b) of Section 17053.74.

(B) Is not an employee of the federal government or of this state or of any political subdivision of this state.

(2) (A) "Qualified wages" means "wages," as defined in subsection (b) of Section 3306 of the Internal Revenue Code, attributable to services performed for an employer with respect to whom the taxpayer is a qualified employee in an amount that does not exceed one and one-half times the dollar limitation specified in that subsection.

(B) "Qualified wages" does not include any compensation received from the federal government or this state or any political subdivision of this state.

(C) "Qualified wages" does not include any wages received on or after the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(3) "Enterprise zone" means any area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(c) For each dollar of income received by the taxpayer in excess of qualified wages, as defined in this section, the credit shall be reduced by nine cents ($0.09).

(d) The amount of the credit allowed by this section in any taxable year shall not exceed the amount of tax that would be imposed on the taxpayer's income attributable to employment within the enterprise zone as if that income represented all of the income of the taxpayer subject to tax under this part.

SEC. 8. Section 17235 of the Revenue and Taxation Code, as added by Chapter 953 of the Statutes of 1996, is repealed.

SEC. 9. Section 17235 of the Revenue and Taxation Code, as added by Chapter 955 of the Statutes of 1996, is amended to read:

17235. (a) There shall be allowed as a deduction the amount of net interest received by the taxpayer in payment on indebtedness of a person or entity engaged in the conduct of a trade or business located in an enterprise zone.

(b) No deduction shall be allowed under this section unless at the time the indebtedness is incurred each of the following requirements are met:

(1) The trade or business is located solely within an enterprise zone.

(2) The indebtedness is incurred solely in connection with activity within the enterprise zone.

(3) The taxpayer has no equity or other ownership interest in the debtor.

(c) "Enterprise zone" means an area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

SEC. 10. Section 23612.2 of the Revenue and Taxation Code, as added by Chapter 953 of the Statutes of 1996, is repealed.

SEC. 11. Section 23612.2 of the Revenue and Taxation Code, as added by Chapter 955 of the Statutes of 1996, is amended to read:

23612.2. (a) There shall be allowed as a credit against the "tax" (as defined by Section 23036) for the income year an amount equal to the sales or use tax paid or incurred during the income year by the taxpayer in connection with the taxpayer's purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means either a bank or corporation engaged in a trade or business within an enterprise zone.

(2) "Qualified property" means:

(A) Any of the following:

(i) Machinery and machinery parts used for fabricating, processing, assembling, and manufacturing.

(ii) Machinery and machinery parts used for the production of renewable energy resources.

(iii) Machinery and machinery parts used for either of the following:

(I) Air pollution control mechanisms.

(II) Water pollution control mechanisms.

(B) The total cost of qualified property purchased and placed in service in any income year that may be taken into account by any taxpayer for purposes of claiming this credit shall not exceed twenty million dollars ($20,000,000).

(C) The qualified property is used by the taxpayer exclusively in an enterprise zone.

(D) The qualified property is purchased and placed in service before the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(3) "Enterprise zone" means the area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(c) If the taxpayer has purchased property upon which a use tax has been paid or incurred, the credit provided by this section shall be allowed only if qualified property of a comparable quality and price is not timely available for purchase in this state.

(d) In the case where the credit otherwise allowed under this section exceeds the "tax" for the income year, that portion of the credit which exceeds the "tax" may be carried over and added to the credit, if any, in the following year, and succeeding years if necessary, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the qualified property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the taxpayer's purchase of qualified property.

(f) (1) The amount of credit otherwise allowed under this section and Section 23622.7, including any credit carryover from prior years, that may reduce the "tax" for the income year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section by substituting "the enterprise zone" for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the "tax" for the income year, as provided in subdivision (d).

SEC. 12. Section 23622.7 of the Revenue and Taxation Code is amended to read:

23622.7. (a) There shall be allowed a credit against the "tax" (as defined by Section 23036) to a taxpayer who employs a qualified employee in an enterprise zone during the income year. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) That portion of wages paid or incurred by the taxpayer during the income year to qualified employees that does not exceed 150 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the day the employee commences employment with the taxpayer.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the taxpayer within the enterprise zone within the 60-month period prior to the zone expiration date shall continue to qualify for the credit under this section after the zone expiration date, in accordance with all provisions of this section applied as if the enterprise zone designation were still in existence and binding.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(4) (A) "Qualified employee" means an individual who meets all of the following requirements:

(i) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone.

(ii) Performs at least 50 percent of his or her services for the taxpayer during the income year in an enterprise zone.

(iii) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise zone.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act, or its successor.

(II) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, or its successor.

(III) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an economically disadvantaged individual 14 years of age or older.

(IV) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a dislocated worker who meets any of the following:

Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has

exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of the closure or layoff.

Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

Is a seasonal or migrant worker who experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

Has been terminated or laid off, or has received a notice of termination or layoff, as a consequence of compliance with the Clean Air Act.

(V) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a disabled individual who is eligible for or enrolled in, or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(VI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilty.

(VII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for or a recipient of any of the following:

Federal Supplemental Security Income benefits.

Aid to Families with Dependent Children.

Food stamps.

State and local general assistance.

(VIII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of

a federally recognized Indian tribe, band, or other group of Native American descent.

(IX) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a resident of a targeted employment area (as defined in Section 7072 of the Government Code).

(X) An employee who qualified the taxpayer for the enterprise zone hiring credit under former Section 23622 or the program area hiring credit under former Section 23623.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible under the federal Targeted Jobs Tax Credit Program.

(5) "Taxpayer" means a bank or corporation engaged in a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(c) The taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department, as permitted by federal law, or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification that provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The Employment Development Department may provide preliminary screening and referral to a certifying agency. The Employment Development Department shall develop a form for this purpose.

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(d) (1) For purposes of this section:

(A) All employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section to each member shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit, and shall be allocated in that manner.

(C) For purposes of this subdivision, "controlled group of corporations" means "controlled group of corporations" as defined in Section 1563(a) of the Internal Revenue Code, except that:

(i) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(ii) The determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal Revenue Code.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (e)) for any calendar year ending after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(e) (1) If the employment of any qualified employee with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment, whether or not consecutive, or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that employee.

(iii) A termination of employment of a qualified employee, if it is determined under the applicable unemployment compensation provisions that the termination was due to the misconduct of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that employee is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and a qualified employee shall not be treated as terminated by either of the following:

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the qualified employee continues to be employed by the acquiring corporation.

(ii) By reason of a mere change in the form of conducting the trade or business of the taxpayer, if the qualified employee continues

to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(f) Rules similar to the rules provided in Section 46(e) and (h) of the Internal Revenue Code shall apply to both of the following:

(1) An organization to which Section 593 of the Internal Revenue Code applies.

(2) A regulated investment company or a real estate investment trust subject to taxation under this part.

(g) For purposes of this section, "enterprise zone" means an area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(h) The credit allowable under this section shall be reduced by the credit allowed under Sections 23623.5, 23625, and 23646 claimed for the same employee. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (i) or (j).

(i) In the case where the credit otherwise allowed under this section exceeds the "tax" for the income year, that portion of the credit that exceeds the "tax" may be carried over and added to the credit, if any, in succeeding income years, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 23612.2, including any credit carryover from prior years, that may reduce the "tax" for the income year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section by substituting "the enterprise zone" for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the "tax" for the income year, as provided in subdivision (i).

SEC. 12.5. Section 23622.7 of the Revenue and Taxation Code is amended to read:

23622.7. (a) There shall be allowed a credit against the "tax" (as defined by Section 23036) to a taxpayer who employs a qualified

employee in an enterprise zone during the income year. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) (i) Except as provided in clause (ii), that portion of wages paid or incurred by the taxpayer during the income year to qualified employees that does not exceed 150 percent of the minimum wage.

(ii) For up to 1,350 qualified employees who are employed by the taxpayer in the Long Beach Enterprise Zone in aircraft manufacturing activities described in Codes 3721 to 3728, inclusive, and Code 3812 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, "qualified wages" means that portion of hourly wages that does not exceed 202 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the day the employee commences employment with the taxpayer.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the taxpayer within the enterprise zone within the 60-month period prior to the zone expiration date shall continue to qualify for the credit under this section after the zone expiration date, in accordance with all provisions of this section applied as if the enterprise zone designation were still in existence and binding.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(4) (A) "Qualified employee" means an individual who meets all of the following requirements:

(i) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone.

(ii) Performs at least 50 percent of his or her services for the taxpayer during the income year in an enterprise zone.

(iii) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise zone.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act, or its successor.

(II) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, or its successor.

(III) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an economically disadvantaged individual 14 years of age or older.

(IV) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a dislocated worker who meets any of the following:

Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of the closure or layoff.

Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

Is a seasonal or migrant worker who experiences chronic seasonal unemployment and underemployment in the agriculture industry,

aggravated by continual advancements in technology and mechanization.

Has been terminated or laid off, or has received a notice of termination or layoff, as a consequence of compliance with the Clean Air Act.

(V) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a disabled individual who is eligible for or enrolled in, or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(VI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilt.

(VII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for or a recipient of any of the following:

Federal Supplemental Security Income benefits.

Aid to Families with Dependent Children.

Food stamps.

State and local general assistance.

(VIII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(IX) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a resident of a targeted employment area (as defined in Section 7072 of the Government Code).

(X) An employee who qualified the taxpayer for the enterprise zone hiring credit under former Section 23622 or the program area hiring credit under former Section 23623.

(XI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a targeted group, as defined in Section 51(d) of the Internal Revenue Code, or its successor.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible as a member of a targeted group under the Work Opportunity Tax Credit (Section 51 of the Internal Revenue Code), or its successor.

(5) "Taxpayer" means a bank or corporation engaged in a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(c) The taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department, as permitted by federal law, or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification that provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The Employment Development Department may provide preliminary screening and referral to a certifying agency. The Employment Development Department shall develop a form for this purpose.

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(d) (1) For purposes of this section:

(A) All employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section to each member shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit, and shall be allocated in that manner.

(C) For purposes of this subdivision, "controlled group of corporations" means "controlled group of corporations" as defined in Section 1563(a) of the Internal Revenue Code, except that:

(i) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(ii) The determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal Revenue Code.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (e)) for any calendar year ending after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(e) (1) If the employment of any qualified employee with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment, whether or not consecutive, or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior

income years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that employee.

(iii) A termination of employment of a qualified employee, if it is determined under the applicable unemployment compensation provisions that the termination was due to the misconduct of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that employee is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and a qualified employee shall not be treated as terminated by either of the following:

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the qualified employee continues to be employed by the acquiring corporation.

(ii) By reason of a mere change in the form of conducting the trade or business of the taxpayer, if the qualified employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(f) Rules similar to the rules provided in Section 46(e) and (h) of the Internal Revenue Code shall apply to both of the following:

(1) An organization to which Section 593 of the Internal Revenue Code applies:

(2) A regulated investment company or a real estate investment trust subject to taxation under this part.

(g) For purposes of this section, "enterprise zone" means an area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(h) The credit allowable under this section shall be reduced by the credit allowed under Sections 23623.5, 23625, and 23646 claimed for the same employee. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (i) or (j).

(i) In the case where the credit otherwise allowed under this section exceeds the "tax" for the income year, that portion of the credit that exceeds the "tax" may be carried over and added to the credit, if any, in succeeding income years, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 23612.2, including any credit carryover from prior years, that may reduce the "tax" for the income year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section by substituting "the enterprise zone" for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the "tax" for the income year, as provided in subdivision (i).

(k) The changes made to this section by the act adding this subdivision shall apply to income years beginning on or after January 1, 1997.

SEC. 13. Section 23622.8 is added to the Revenue and Taxation Code, to read:

23622.8. (a) For each income year beginning on or after January 1, 1998, there shall be allowed a credit against the "tax" (as defined in Section 23036) to a qualified taxpayer for hiring a qualified disadvantaged individual during the income year for employment in the Manufacturing Enhancement Area. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of the qualified wages in the first year of employment.

(2) Forty percent of the qualified wages in the second year of employment.

(3) Thirty percent of the qualified wages in the third year of employment.

(4) Twenty percent of the qualified wages in the fourth year of employment.

(5) Ten percent of the qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) That portion of wages paid or incurred by the qualified taxpayer during the income year to qualified disadvantaged individuals that does not exceed 150 percent of the minimum wage.

(B) The total amount of qualified wages which may be taken into account for purposes of claiming the credit allowed under this section shall not exceed two million dollars ($2,000,000) per income year.

(C) Wages received during the 60-month period beginning with the day the qualified disadvantaged individual commences employment with the qualified taxpayer.

(D) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the Manufacturing Enhancement Area expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the qualified taxpayer within the Manufacturing Enhancement Area within the 60-month period prior to the Manufacturing Enhancement Area expiration date shall continue to qualify for the credit under this section after the Manufacturing Enhancement Area expiration date, in accordance with all provisions of this section applied as if the Manufacturing Enhancement Area designation were still in existence and binding.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Manufacturing Enhancement Area" means an area designated pursuant to Section 7073.8 of the Government Code according to the procedures of Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(4) "Manufacturing Enhancement Area expiration date" means the date the Manufacturing Enhancement Area designation expires, is no longer binding, or becomes inoperative.

(5) "Qualified disadvantaged individual" means an individual who satisfies all of the following requirements:

(A) (i) At least 90 percent of whose services for the qualified taxpayer during the income year are directly related to the conduct of the qualified taxpayer's trade or business located in a Manufacturing Enhancement Area.

(ii) Who performs at least 50 percent of his or her services for the qualified taxpayer during the income year in the Manufacturing Enhancement Area.

(B) Who is hired by the qualified taxpayer after the designation of the area as a Manufacturing Enhancement Area in which the individual's services were primarily performed.

(C) Who is any of the following immediately preceding the individual's commencement of employment with the qualified taxpayer:

(i) An individual who has been determined eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.).

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 as provided pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any individual who has been certified eligible by the Employment Development Department under the federal Targeted Jobs Tax Credit Program, whether or not this program is in effect.

(6) "Qualified taxpayer" means any corporation engaged in a trade or business within a Manufacturing Enhancement Area designated pursuant to Section 7073.8 of the Government Code and that meets both of the following requirements:

(A) Is engaged in those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(B) At least 30 percent of the corporation's work force hired after the designation of the Manufacturing Enhancement Area is composed of qualified disadvantaged individuals who, at the time of hire, are residents of the county in which the Manufacturing Enhancement Area is located.

(c) (1) For purposes of this section, all of the following apply:

(A) All employees of all corporations that are members of the same controlled group of corporations shall be treated as employed by a single qualified taxpayer.

(B) The credit (if any) allowable by this section with respect to each member shall be determined by reference to its proportionate share of the expenses of the qualified wages giving rise to the credit and shall be allocated in that manner.

(C) Principles that apply in the case of controlled groups of corporations, as specified in subdivision (d) of Section 23622.7, shall apply with respect to determining employment.

(2) If a qualified taxpayer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (d)) for any calendar year ending after that acquisition, the employment relationship between a qualified disadvantaged individual and a qualified taxpayer shall not be treated as terminated if the qualified disadvantaged individual continues to be employed in that trade or business.

(d) (1) If the employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (b) is terminated by the qualified taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th

calendar day after the day in which that qualified disadvantaged individual completes 90 days of employment with the qualified taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that qualified disadvantaged individual.

(2) (A) Paragraph (1) does not apply to any of the following:

(i) A termination of employment of a qualified disadvantaged individual who voluntarily leaves the employment of the qualified taxpayer.

(ii) A termination of employment of a qualified disadvantaged individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the qualified taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of a qualified disadvantaged individual, if it is determined under the applicable employment compensation laws that the termination was due to the misconduct of that individual.

(iv) A termination of employment of a qualified disadvantaged individual due to a substantial reduction in the trade or business operations of the qualified taxpayer.

(v) A termination of employment of a qualified disadvantaged individual, if that individual is replaced by other qualified disadvantaged individuals so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the qualified taxpayer and a qualified disadvantaged individual shall not be treated as terminated by either of the following:

(i) By a transaction to which Section 381(a) of the Internal Revenue code applies, if the qualified disadvantaged individual continues to be employed by the acquiring corporation.

(ii) By reason of a mere change in the form of conducting the trade or business of the qualified taxpayer, if the qualified disadvantaged individual continues to be employed in that trade or business and the qualified taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(e) The credit shall be reduced by the credit allowed under Section 23621. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the qualified taxpayer upon

which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (f) or (g).

(f) In the case where the credit otherwise allowed under this section exceeds the "tax" for the income year, that portion of the credit that exceeds the "tax" may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(g) (1) The amount of credit otherwise allowed under this section, including prior year credit carryovers, that may reduce the "tax" for the income year shall not exceed the amount of tax that would be imposed on the qualified taxpayer's business income attributed to a Manufacturing Enhancement Area determined as if that attributed income represented all of the net income of the qualified taxpayer subject to tax under this part.

(2) The amount of attributed income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section as follows:

(A) Income shall be apportioned to a Manufacturing Enhancement Area by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) "The Manufacturing Enhancement Area" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the "tax" for the income year, as provided in subdivision (g).

(h) (1) In the case where "qualified wages" qualify for a credit under more than one section in this part, the qualified taxpayer shall make an election as to which section applies to those qualified wages.

(2) Any election made under this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

SEC. 13.5. Section 23622.8 is added to the Revenue and Taxation Code, to read:

23622.8. (a) For each income year beginning on or after January 1, 1998, there shall be allowed a credit against the "tax" (as defined in Section 23036) to a qualified taxpayer for hiring a qualified disadvantaged individual during the income year for employment in the Manufacturing Enhancement Area. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of the qualified wages in the first year of employment.

(2) Forty percent of the qualified wages in the second year of employment.

(3) Thirty percent of the qualified wages in the third year of employment.

(4) Twenty percent of the qualified wages in the fourth year of employment.

(5) Ten percent of the qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) That portion of wages paid or incurred by the qualified taxpayer during the income year to qualified disadvantaged individuals that does not exceed 150 percent of the minimum wage.

(B) The total amount of qualified wages that may be taken into account for purposes of claiming the credit allowed under this section shall not exceed two million dollars ($2,000,000) per income year.

(C) Wages received during the 60-month period beginning with the day the qualified disadvantaged individual commences employment with the qualified taxpayer.

(D) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the Manufacturing Enhancement Area expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the qualified taxpayer within the Manufacturing Enhancement Area within the 60-month period prior to the Manufacturing Enhancement Area expiration date shall continue to qualify for the credit under this section after the Manufacturing Enhancement Area expiration date, in accordance with all provisions of this section applied as if the Manufacturing Enhancement Area designation were still in existence and binding.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Manufacturing Enhancement Area" means an area designated pursuant to Section 7073.8 of the Government Code according to the procedures of Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(4) "Manufacturing Enhancement Area expiration date" means the date the Manufacturing Enhancement Area designation expires, is no longer binding, or becomes inoperative.

(5) "Qualified disadvantaged individual" means an individual who satisfies all of the following requirements:

(A) (i) At least 90 percent of whose services for the qualified taxpayer during the income year are directly related to the conduct of the qualified taxpayer's trade or business located in a Manufacturing Enhancement Area.

(ii) Who performs at least 50 percent of his or her services for the qualified taxpayer during the income year in the Manufacturing Enhancement Area.

(B) Who is hired by the qualified taxpayer after the designation of the area as a Manufacturing Enhancement Area in which the individual's services were primarily performed.

(C) Who is any of the following immediately preceding the individual's commencement of employment with the qualified taxpayer:

(i) An individual who has been determined eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.).

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 as provided pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any individual who has been certified eligible by the Employment Development Department under the federal Targeted Jobs Tax Credit Program, whether or not this program is in effect.

(6) "Qualified taxpayer" means any corporation engaged in a trade or business within a Manufacturing Enhancement Area designated pursuant to Section 7073.8 of the Government Code and that meets both of the following requirements:

(A) Is engaged in those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(B) At least 30 percent of the corporation's work force hired after the designation of the Manufacturing Enhancement Area is composed of qualified disadvantaged individuals who, at the time of hire, are residents of the county in which the Manufacturing Enhancement Area is located.

(c) (1) For purposes of this section, all of the following apply:

(A) All employees of all corporations that are members of the same controlled group of corporations shall be treated as employed by a single qualified taxpayer.

(B) The credit (if any) allowable by this section with respect to each member shall be determined by reference to its proportionate share of the expenses of the qualified wages giving rise to the credit and shall be allocated in that manner.

(C) Principles that apply in the case of controlled groups of corporations, as specified in subdivision (d) of Section 23622.7, shall apply with respect to determining employment.

(2) If a qualified taxpayer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (d)) for any calendar year ending after that acquisition, the employment relationship between a qualified disadvantaged individual and a qualified taxpayer shall not

be treated as terminated if the qualified disadvantaged individual continues to be employed in that trade or business.

(d) (1) If the employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (b) is terminated by the qualified taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that qualified disadvantaged individual completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that qualified disadvantaged individual.

(2) (A) Paragraph (1) does not apply to any of the following:

(i) A termination of employment of a qualified disadvantaged individual who voluntarily leaves the employment of the qualified taxpayer.

(ii) A termination of employment of a qualified disadvantaged individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the qualified taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of a qualified disadvantaged individual, if it is determined under the applicable employment compensation laws that the termination was due to the misconduct of that individual.

(iv) A termination of employment of a qualified disadvantaged individual due to a substantial reduction in the trade or business operations of the qualified taxpayer.

(v) A termination of employment of a qualified disadvantaged individual, if that individual is replaced by other qualified disadvantaged individuals so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and a qualified disadvantaged individual shall not be treated as terminated by either of the following:

(i) By a transaction to which Section 381(a) of the Internal Revenue code applies, if the qualified disadvantaged individual continues to be employed by the acquiring corporation.

(ii) By reason of a mere change in the form of conducting the trade or business of the qualified taxpayer, if the qualified disadvantaged individual continues to be employed in that trade or business and the qualified taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(e) The credit shall be reduced by the credit allowed under Section 23621. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the qualified taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (f) or (g).

(f) In the case where the credit otherwise allowed under this section exceeds the "tax" for the income year, that portion of the credit that exceeds the "tax" may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(g) (1) The amount of credit otherwise allowed under this section, including prior year credit carryovers, that may reduce the "tax" for the income year shall not exceed the amount of tax that would be imposed on the qualified taxpayer's business income attributed to a Manufacturing Enhancement Area determined as if that attributed income represented all of the net income of the qualified taxpayer subject to tax under this part.

(2) The amount of attributed income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section as follows:

(A) Income shall be apportioned to a Manufacturing Enhancement Area by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) "The Manufacturing Enhancement Area" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the "tax" for the income year, as provided in subdivision (g).

(h) If the qualified taxpayer is allowed a credit pursuant to this section for qualified wages paid or incurred, only one credit shall be allowed under this part with respect to any wage consisting in whole or in part of those qualified wages.

SEC. 14. Section 24384.5 of the Revenue and Taxation Code, as added by Chapter 953 of the Statutes of 1996, is repealed.

SEC. 15. Section 24384.5 of the Revenue and Taxation Code, as added by Chapter 955 of the Statutes of 1996, is amended to read:

24384.5. (a) There shall be allowed as a deduction the amount of net interest received by the taxpayer in payment of indebtedness of a person or entity engaged in a trade or business located in an enterprise zone.

(b) No deduction shall be allowed under this section unless at the time the indebtedness is incurred each of the following requirements are met:

(1) The trade or business is located solely within an enterprise zone.

(2) The indebtedness is incurred solely in connection with activity within the enterprise zone.

(3) The taxpayer has no equity or other ownership interest in the debtor.

(c) "Enterprise zone" means an area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

SEC. 16. If this bill and Assembly Bill 1040 are both enacted, and Assembly Bill 1040 amends Sections 17053.17, 17053.46, 23623.5, and 23646 of the Revenue and Taxation Code, Sections 2 and 13 of this bill shall not become operative.

SEC. 17. If this bill is enacted, but Assembly Bill 1040 is not enacted, or if this bill and Assembly Bill 1040 are both enacted, and Assembly Bill 1040 does not amend Sections 17053.17, 17053.46, 23623.5, and 23646 of the Revenue and Taxation Code, Sections 2.5 and 13.5 of this bill shall not become operative.

SEC. 18. (a) Section 5.5 of this bill incorporates amendments to Section 17053.74 of the Revenue and Taxation Code proposed by both this bill and SB 965. 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 17053.74 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 965, in which case Section 17053.74 of the Revenue and Taxation Code, as amended by SB 965, shall remain operative only until the operative date of this bill, at which time Section 5.5 of this bill shall become operative, and Section 5 of this bill shall not become operative.

(b) Section 7.5 of this bill incorporates amendments to Section 17053.75 of the Revenue and Taxation Code proposed by this bill and SB 965. 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 17053.75 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 965, in which case Section 17053.75 of the Revenue and Taxation Code, as amended by SB 965, shall remain operative only until the operative date of this bill, at which time Section 7.5 of this bill shall become operative, and Section 7 of this bill shall not become operative.

(c) Section 12.5 of this bill incorporates amendments to Section 23622.7 of the Revenue and Taxation Code proposed by this bill and SB 965. 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 23622.7 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 965, in which case Section 23622.7 of the Revenue and Taxation Code, as amended by SB 965, shall remain operative

only until the operative date of this bill, at which time Section 12.5 of this bill shall become operative, and Section 12 of this bill shall not become operative.

CHAPTER 610

An act to amend Sections 17152, 18042, 18510, 18601, 23732, 23801, 23802, 23806, and 24611 of, and to add Sections 17275.6, 17731.5, 18037.5, 19136.4, 19365, 23800.5, 23802.5, 23804, 23804.5, 23813, 24954, and 24990.4 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 1, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Section 17152 of the Revenue and Taxation Code is amended to read:

17152. (a) For sales and exchanges before May 7, 1997, and on or after July 1, 1998, Section 121 of the Internal Revenue Code, relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55, is modified to additionally include both of the following:

(1) The dollar amount of the exclusion in Section 121(b) of the Internal Revenue Code shall be the same as allowed for federal purposes as determined by the taxpayer's filing status for federal purposes even though the taxpayer is prohibited from filing a joint return pursuant to Section 18521. However, in no instance shall the total amount excludable for the sale of a principal residence exceed the maximum amount allowed by Section 121(b) of the Internal Revenue Code.

(2) The three-year period in Section 121(a)(2) of the Internal Revenue Code shall be reduced by the period of the taxpayer's service, not to exceed 18 months, in the Peace Corps during the five-year period ending on the date of the sale or exchange.

(b) For sales and exchanges on and after May 7, 1997, and on or before June 30, 1998, Section 121 of the Internal Revenue Code, relating to one-time exclusion of gain from sale of principal residence by an individual who has attained age 55, shall not apply and in lieu of that section subdivisions (c) to (h), inclusive, shall apply. References in the Internal Revenue Code to Section 121 of the Internal Revenue Code shall instead be treated as a reference to subdivision (c) of this section.

(c) Gross income shall not include gain from the sale or exchange of property if, during the five-year period ending on the date of the sale or exchange, the property has been owned and used by the

taxpayer as the taxpayer's principal residence for periods aggregating two years or more. The two-year period shall be reduced by the period of the taxpayer's service, not to exceed 18 months, in the Peace Corps during the five-year period ending on the date of the sale or exchange.

(d) (1) The amount of gain excluded from gross income under subdivision (c) with respect to any sale or exchange shall not exceed two hundred fifty thousand dollars ($250,000).

(2) Paragraph (1) shall be applied by substituting five hundred thousand dollars ($500,000) for two hundred fifty thousand dollars ($250,000) if all of the following conditions are met:

(A) A husband and wife make a joint return for the taxable year of the sale or exchange of the property.

(B) Either spouse meets the ownership requirements of subdivision (c) with respect to the property.

(C) Both spouses meet the use requirements of subdivision (c) with respect to the property.

(D) Neither spouse is ineligible for the benefits of subdivision (c) with respect to the property by reason of paragraph (3).

(3) (A) Subdivision (c) shall not apply to any sale or exchange by the taxpayer if, during the two-year period ending on the date of the sale or exchange, there was any other sale or exchange by the taxpayer to which subdivision (c) applied.

(B) Subparagraph (A) shall be applied without regard to any sale or exchange before May 7, 1997.

(4) If the taxpayer is prohibited from filing a joint return pursuant to Section 18521, subparagraph (A) of paragraph (2) shall nevertheless be treated as being satisfied if the taxpayer files a joint return for federal income tax purposes for the same taxable year. However, in no instance shall the total amount excludable from gross income under subdivision (c) with respect to any sale or exchange exceed five hundred thousand dollars ($500,000).

(e) (1) In the case of a sale or exchange that is subject to this subdivision in accordance with paragraph (2), the ownership and use requirements of subdivision (c) shall not apply and paragraph (3) of subdivision (d) shall not apply, but the amount of gain excluded from gross income under subdivision (c) with respect to the sale or exchange shall not exceed the amount that bears the same ratio to the amount that would be so excluded if those requirements had been met, as the shorter of the following two periods bears to two years:

(A) The aggregate periods, during the five-year period ending on the date of the sale or exchange, during which the property has been owned and used by the taxpayer as the taxpayer's principal residence.

(B) The period after the date of the most recent prior sale or exchange by the taxpayer to which subdivision (c) applied and before the date of the sale or exchange.

(2) This subdivision shall apply to any sale or exchange if:

(A) Subdivision (c) would not, but for this subdivision, apply to the sale or exchange by reason of either of the following:

(i) A failure to meet the ownership and use requirements of subdivision (c).

(ii) Paragraph (3) of subdivision (d).

(B) The sale or exchange is by reason of a change in place of employment, health, or, to the extent provided in regulations, unforeseen circumstances.

(f) (1) For purposes of this section, in the case of an unmarried individual whose spouse is deceased on the date of the sale or exchange of property, the period the unmarried individual owned the property shall include the period the deceased spouse owned the property before death.

(2) For purposes of this section:

(A) In the case of an individual holding property transferred to that individual in a transaction described in Section 1041(a) of the Internal Revenue Code, the period the individual owns the property shall include the period the transferor owned the property.

(B) Solely for purposes of this section, an individual shall be treated as using property as that individual's principal residence during any period of ownership while that individual's spouse or former spouse is granted use of the property under a divorce or separation instrument, as defined in Section 71(b)(2) of the Internal Revenue Code.

(3) For purposes of this section, if the taxpayer holds stock as a tenant-stockholder, as defined in Section 216 of the Internal Revenue Code, in a cooperative housing corporation, as defined in Section 216 of the Internal Revenue Code:

(A) The holding requirements of subdivision (c) shall be applied to the holding of that stock.

(B) The use requirements of subdivision (c) shall be applied to the house or apartment which the taxpayer was entitled to occupy as the stockholder.

(4) (A) For purposes of this section, the destruction, theft, seizure, requisition, or condemnation of property shall be treated as the sale of the property.

(B) In applying Section 1033 of the Internal Revenue Code, relating to involuntary conversions, the amount realized from the sale or exchange of property shall be treated as being the amount determined without regard to this section, reduced by the amount of gain not included in gross income pursuant to this section.

(C) If the basis of the property sold or exchanged is determined, in whole or in part, under Section 1033(b) of the Internal Revenue Code, relating to basis of property acquired through involuntary conversion, then the holding and use by the taxpayer of the converted property shall be treated as holding and use by the taxpayer of the property sold or exchanged.

(5) Subdivision (c) shall not apply to so much of the gain from the sale of any property as does not exceed the portion of the depreciation adjustments, as defined in Section 1250(b)(3) of the Internal Revenue Code, attributable to periods after May 6, 1997, with respect to that property.

(6) In the case of a taxpayer who becomes physically or mentally incapable of self-care, and owns property and uses the property as the taxpayer's principal residence during the five-year period described in subdivision (c) for periods aggregating at least one year, the taxpayer shall be treated as using the property as the taxpayer's principal residence during any time during the five-year period in which the taxpayer owns the property and resides in any facility, including a nursing home, licensed by a state or political subdivision to care for an individual in the taxpayer's condition.

(7) In the case of any sale or exchange, for purposes of this section:

(A) The determination of whether an individual is married shall be made as of the date of the sale or exchange.

(B) An individual legally separated from his or her spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(8) For purposes of this section:

(A) At the election of the taxpayer, this section shall not fail to apply to the sale or exchange of an interest in a principal residence by reason of that interest being a remainder interest in the residence, but this section shall not apply to any other interest in that residence which is sold or exchanged separately.

(B) Subparagraph (A) shall not apply to any sale to, or exchange with, any person who bears a relationship to the taxpayer which is described in Section 267(b) or 707(b) of the Internal Revenue Code.

(g) If a taxpayer has, at any time, made an election for federal purposes under Section 121(f) of the Internal Revenue Code, as amended by Public Law 105-34, not to have Section 121 of the Internal Revenue Code, as amended by Public Law 105-34, apply to a sale or exchange, subdivision (c) of this section shall not apply to that sale or exchange, a separate election for state purposes shall not be allowed under paragraph (3) of subdivision (e) of Section 17024.5, the federal election shall be binding for purposes of this part, and that election shall be treated as an election to include in gross income for purposes of this part all the gain from the sale or exchange of property, including that amount which, but for that election, would have been excluded from income under subdivision (c) of this section.

(h) For purposes of this section, in the case of property the acquisition of which by the taxpayer resulted under Section 1034 of the Internal Revenue Code, as in effect on the day before the date of enactment of the act adding this subdivision, in the nonrecognition of any part of the gain realized on the sale or exchange of another residence, in determining the period for which the taxpayer has

owned and used the property as the taxpayer's principal residence, there shall be included the aggregate periods for which the other residence, and each prior residence taken into account under Section 1223(7) of the Internal Revenue Code in determining the holding period of the property, had been so owned and used.

(i) For sales and exchanges on or after May 7, 1997, and on or before June 30, 1998, the provisions that require a report under Section 18643 are modified to only require a copy of the federal return required to be filed with the Secretary of the Treasury under Section 6045(e) of the Internal Revenue Code, as amended by Public Law 105-34.

SEC. 2. Section 17275.6 is added to the Revenue and Taxation Code, to read:

17275.6. For taxable years beginning on or after January 1, 1998, Section 170(e)(1) of the Internal Revenue Code, relating to certain contributions of ordinary income and capital gain property, is modified to provide that for purposes of applying Section 170(e)(1) of the Internal Revenue Code in the case of a charitable contribution of stock in an S corporation, rules similar to the rules of Section 751 of the Internal Revenue Code, relating to unrealized receivables and inventory items, shall apply in determining whether gain on the stock would have been long-term capital gain if the stock were sold by the taxpayer.

SEC. 3. Section 17731.5 is added to the Revenue and Taxation Code, to read:

17731.5. (a) Section 641 of the Internal Revenue Code, relating to imposition of tax, is modified as follows:

(1) For purposes of this part, both of the following shall apply:

(A) The portion of any electing small business trust which consists of stock in one or more "S corporations" shall be treated as a separate trust.

(B) The amount of the tax imposed by this part on that separate trust shall be determined with the modifications of paragraph (2).

(2) For purposes of paragraph (1), the modifications are the following:

(A) The amount of the tax imposed by subdivision (e) of Section 17041 shall be determined by using the highest rate of tax applicable to an individual under subdivision (a) of Section 17041.

(B) The credit allowed under subdivision (b) of Section 17733 shall be zero.

(C) The only items of income, loss, deduction, or credit to be taken into account are the following:

(i) The items required to be taken into account under Section 1366 of the Internal Revenue Code, relating to passthrough of items to shareholders, as modified for purposes of this part and Part 11.

(ii) Any gain or loss from the disposition of stock in an "S corporation."

(iii) Administrative expenses to the extent allocable to items described in clauses (i) and (ii).

No deduction or credit shall be allowed for any amount not described in this paragraph, and no item described in this paragraph shall be apportioned to any beneficiary.

(D) No amount shall be allowed under Section 1211(b)(1) or (2) of the Internal Revenue Code, relating to limitation on capital losses.

(3) For purposes of determining the amount of the tax imposed by this part on the portion of any electing small business trust not treated as a separate trust under paragraph (1), and the distributable net income of the entire trust, the items referred to in subparagraph (C) of paragraph (2) shall be excluded. Except as provided in the preceding sentence, this section shall not affect the taxation of any distribution from the trust.

(4) If a portion of an electing small business trust ceases to be treated as a separate trust under paragraph (1), any carryover or excess deduction of the separate trust which is referred to in Section 642(h) of the Internal Revenue Code, relating to unused loss carryovers and excess deductions on termination available to beneficiaries, shall be taken into account by the entire trust.

(5) For purposes of this section, the term "electing small business trust" has the meaning given to that term by subdivision (d) of Section 23800.5.

(b) This section shall apply to taxable years beginning on or after January 1, 1997.

SEC. 4. Section 18037.5 is added to the Revenue and Taxation Code, to read:

18037.5. For sales and exchanges after May 6, 1997, and on or before June 30, 1998:

(a) Section 1034 of the Internal Revenue Code, relating to rollover of gain on sale of principal residence, shall not apply.

(b) References in Sections 56(e), 163(h), 280A(d), 464(f), 1033(h), 1274(c), and 7872(f) of the Internal Revenue Code, and paragraph (3) of subdivision (e) of Section 18662 of the Revenue and Taxation Code, to Section 1034 of the Internal Revenue Code, shall instead be treated as a reference to Section 17152 of the Revenue and Taxation Code.

(c) Section 216(e) of the Internal Revenue Code is modified by substituting "such dwelling unit is used as his or her principal residence (within the meaning of Section 17152)" for the phrase "such exchange qualifies for nonrecognition of gain under Section 1034(f)."

(d) References in Sections 512(a), 1016(a), and 1223(7) of the Internal Revenue Code to Section 1034 of the Internal Revenue Code shall be treated as a reference to that section as in effect on the day before the date of the enactment of the act adding this section.

(e) Section 1038(e) of the Internal Revenue Code, relating to principal residences, shall be modified to provide that, under

regulations prescribed by the Secretary of the Treasury under Section 1038 of the Internal Revenue Code, unless the Franchise Tax Board prescribes otherwise, Section 1038(b), (c), and (d) of the Internal Revenue Code shall not apply to the reacquisition of property and, for purposes of applying Section 17152, the resale of that property shall be treated as a part of the transaction constituting the original sale of the property, if both of the following apply:

(1) Section 1038(a) of the Internal Revenue Code applies to a reacquisition of real property with respect to the sale of which gain was not recognized under Section 17152.

(2) Within one year after the date of reacquisition of the property by the seller, that property is resold by him or her.

(f) Section 1250(d)(7) of the Internal Revenue Code, relating to disposition of principal residence, shall not apply.

(g) Section 1250(e)(3) of the Internal Revenue Code, relating to principal residence, shall not apply.

SEC. 5. Section 18042 of the Revenue and Taxation Code is amended to read:

18042. (a) Section 1042 of the Internal Revenue Code, relating to sales of stock to employee stock ownership plans or certain cooperatives, shall apply to taxable years beginning on or after January 1, 1996.

(b) For taxable years beginning on or after January 1, 1998, Section 1042 of the Internal Revenue Code, relating to sales of stock to employee stock ownership plans or certain cooperatives, is modified to provide that the term "domestic corporation" shall instead mean "domestic C corporation."

SEC. 6. Section 18510 of the Revenue and Taxation Code is amended to read:

18510. For purposes of Sections 18501, 18505, and 18521, gross income shall be computed without regard to the exclusion provided for in Section 17152.

SEC. 7. Section 18601 of the Revenue and Taxation Code is amended to read:

18601. (a) Except as provided in subdivision (b) or (c), every taxpayer subject to the tax imposed by Part 11 (commencing with Section 23001) shall, within two months and 15 days after the close of its income year, transmit to the Franchise Tax Board a return in a form prescribed by it, specifying for the income year, all the facts as it may by rule, or otherwise, require in order to carry out this part. A tax return, disclosing net income for any income year, filed pursuant to Chapter 2 (commencing with Section 23101) or Chapter 3 (commencing with Section 23501) of Part 11 shall be deemed filed pursuant to the proper chapter of Part 11 for the same income period, if the chapter under which the return is filed is determined erroneous.

(b) In the case of cooperative associations described in Section 24404, returns shall be filed on or before the 15th day of the ninth month following the close of its income year.

(c) In the case of taxpayers required to file a return for a short period under Section 24634, the due date for the short period return shall be the same as the due date of the federal tax return that includes the net income of the taxpayer for that short period, or the due date specified in subdivision (a) if no federal return is required to be filed that would include the net income for that short period.

(d) For income years beginning on or after January 1, 1997, each "S corporation" required to file a return under subdivision (a) for any income year shall, on or before the day on which the return for the income year was filed, furnish each person who is a shareholder at any time during the income year a copy of the information shown on the return.

(e) For taxable or income years beginning on or after January 1, 1997:

(1) A shareholder of an "S corporation" shall, on the shareholder's return, treat a Subchapter S item in a manner that is consistent with the treatment of the item on the corporate return.

(2) (A) In the case of any Subchapter S item, paragraph (1) shall not apply to that item if both of the following occur:

(i) Either of the following occurs:

(I) The corporation has filed a return but the shareholder's treatment of the item on the shareholder's return is or may be inconsistent with the treatment of the item on the corporate return.

(II) The corporation has not filed a return.

(ii) The shareholder files with the Franchise Tax Board a statement identifying the inconsistency.

(B) A shareholder shall be treated as having complied with clause (ii) of subparagraph (A) with respect to a Subchapter S item if the shareholder does both of the following:

(i) Demonstrates to the satisfaction of the Franchise Tax Board that the treatment of the Subchapter S item on the shareholder's return is consistent with the treatment of the item on the schedule furnished to the shareholder by the corporation.

(ii) Elects to have this paragraph apply with respect to that item.

(3) In any case described in subclause (I) of clause (i) of subparagraph (A) of paragraph (2), and in which the shareholder does not comply with clause (ii) of subparagraph (A) of paragraph (2), any adjustment required to make the treatment of the items by the shareholder consistent with the treatment of the items on the corporate return shall be treated as arising out of a mathematical error and assessed and collected under Section 19051.

(4) For purposes of this subdivision, the term "Subchapter S item" means any item of an "S corporation" to the extent provided by regulations that, for purposes of Part 10 (commencing with Section

17001) or this part, the item is more appropriately determined at the corporation level than at the shareholder level.

(5) The penalties imposed under Article 7 (commencing with Section 19131) of Chapter 4 shall apply in the case of a shareholder's negligence in connection with, or disregard of, the requirements of this section.

SEC. 8. Section 19136.4 is added to the Revenue and Taxation Code, to read:

19136.4. (a) No addition to tax shall be made under Section 19136 for any period before April 16, 1998, with respect to any underpayment of an installment for the 1997 taxable year, to the extent that the underpayment was created or increased by Section 1, 4, or 6 of the act adding this section.

(b) The Franchise Tax Board shall adopt procedures, forms, and instructions necessary to implement this section in a reasonable manner.

SEC. 9. Section 19365 is added to the Revenue and Taxation Code, to read:

19365. (a) (1) A corporation electing to be treated as an "S corporation" under Chapter 4.5 (commencing with Section 23800) of Part 11, may file an application for the transfer of an overpayment with respect to payments of estimated tax for income years beginning in 1997, to the personal income tax accounts of its shareholders. An application under this subdivision shall not constitute a claim for credit or refund.

(2) An application under this subdivision shall be verified in the manner prescribed by Section 18621 in the case of the taxpayer, and shall be filed in the manner and form prescribed by the Franchise Tax Board. The application shall set forth all of the following:

(A) The amount the "S corporation" estimates as its tax liability under this part for the taxable year, which shall not be less than the greater of $1^1/_2$ percent of its net income or the applicable minimum franchise tax.

(B) The amount and date of the estimated tax paid during the income year.

(C) For each shareholder affected, his or her name, social security account number, address, percent of ownership and any changes in percent of ownership for the "S corporation's" income year, and amount of each overpayment to be transferred, and the date the amount was paid.

(D) Any other information for purposes of carrying out this section as may be required by the Franchise Tax Board.

(b) (1) Within a period of 45 days from the date on which an application for a transfer is filed under subdivision (a), the Franchise Tax Board shall make, to the extent it deems practicable in that period, a limited examination of the application to discover omissions and errors therein, and shall determine the final amount of the transfers upon the basis of the application and the examination,

except that the Franchise Tax Board may disallow, without further action, any application which it finds contains material omissions or errors which it deems cannot be corrected within the 45-day period.

(2) The Franchise Tax Board, within the 45-day period referred to in paragraph (1), may credit the amount of the overpayment against any liability on the part of the taxpayer under Part 11.

(3) In the event the amount available for transfer is less than requested by the taxpayer, the overpayment amount shall be allocated among the shareholders on a pro rata basis based on the percent of ownership stated on the application.

(4) For purposes of Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), and this part, the transferred amounts shall be treated as if they had been estimated tax payments paid by the respective shareholders on the date originally paid by the corporation.

(5) No application under subdivision (a) shall be allowed unless the amount to be transferred equals or exceeds five hundred dollars ($500).

(6) Each "S corporation" which files an application for transfer of overpayments under subdivision (a) shall furnish to each person who is a shareholder at any time during the income year a statement showing amounts and dates of the overpayments being transferred to that person's personal income tax account.

SEC. 10. Section 23732 of the Revenue and Taxation Code is amended to read:

23732. Section 512 of the Internal Revenue Code, relating to unrelated business taxable income, shall apply, except as otherwise provided.

(a) Section 512(a)(2) of the Internal Revenue Code, relating to special rules for foreign organizations, shall not be applicable.

(b) Section 512(a)(3) of the Internal Revenue Code, relating to special rules applicable to certain organizations, shall be modified as follows:

(1) The reference to Section 501(c)(7) of the Internal Revenue Code, relating to clubs organized for pleasure, recreation, and other nonprofitable purposes, shall be modified to refer to Section 23701g.

(2) The reference to Section 501(c)(9) of the Internal Revenue Code, relating to voluntary employees' beneficiary associations, shall be modified to refer to Section 23701i.

(3) The reference to Section 501(c)(17) of the Internal Revenue Code, relating to trusts providing for payment of supplemental unemployment compensation benefits, shall be modified to refer to Section 23701n.

(4) The reference to Section 501(c)(20) of the Internal Revenue Code, relating to qualified group legal services plans, shall be modified to refer to Section 23701q.

(c) Section 512(b)(10) of the Internal Revenue Code, relating to charitable contributions, shall be modified to provide that such

deductions shall not exceed 5 percent of the unrelated business taxable income, rather than 10 percent.

(d) For income years beginning on or after January 1, 1998, Section 512 of the Internal Revenue Code, relating to unrelated business taxable income, is modified to provide that:

(1) If an organization described in paragraph (2) of subdivision (b) of Section 23800.5 holds stock in an "S corporation," both of the following shall apply:

(A) The interest shall be treated as an interest in an unrelated trade or business.

(B) Notwithstanding any other provision of Part III of Chapter 1A of the Internal Revenue Code, Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), or this part, all items of income, loss, or deduction taken into account under Section 1366(a) of the Internal Revenue Code, and any gain or loss on the disposition of the stock in the S corporation, shall be taken into account in computing the unrelated business taxable income of the organization.

(2) Except as provided in regulations, for purposes of paragraph (1), the basis of any stock acquired by purchase, within the meaning of Section 1012 of the Internal Revenue Code, shall be reduced by the amount of any dividends received by the organization with respect to the stock.

SEC. 11. Section 23800.5 is added to the Revenue and Taxation Code, to read:

23800.5. (a) For income years beginning on or after January 1, 1997, Section 1361(b)(1)(A) of the Internal Revenue Code, relating to small business corporations defined, shall be modified by substituting "have more than 75 shareholders," in lieu of "have more than 35 shareholders" specified therein.

(b) For income years beginning on or after January 1, 1998:

(1) Section 1361(b)(1)(B) of the Internal Revenue Code, relating to small business corporations, is modified to provide that a small business corporation may not have as a shareholder a person (other than an estate, a trust described in Section 1361(c)(2) of the Internal Revenue Code, or an organization described in paragraph (2)), who is not an individual.

(2) Section 1361(c) of the Internal Revenue Code, relating to special rule for applying subsection (b), is modified to provide that, for purposes of Section 1361(b)(1)(B) of the Internal Revenue Code, an organization that is described in Section 401(a) of the Internal Revenue Code or Section 23701d of this code, and exempt from taxation under Section 23701, may be a shareholder in an "S corporation."

(c) For income years beginning on or after January 1, 1997, Section 1361(c)(2) of the Internal Revenue Code, relating to certain trusts permitted as shareholders, is modified as follows:

(1) (A) The phrase "60-day period" is modified to read "2-year period" each place it appears in Section 1361(c)(2)(A)(ii) and (iii) of the Internal Revenue Code.

(B) The last sentence in Section 1361(c)(2)(A)(ii) of the Internal Revenue Code shall not apply.

(2) Section 1361(c)(2)(A) of the Internal Revenue Code is modified to provide that an electing small business trust may be a shareholder.

(3) Section 1361(c)(2)(B) of the Internal Revenue Code is modified to provide that in the case of an electing small business trust, each potential current beneficiary of the trust shall be treated as a shareholder. However, if for any period there is no potential current beneficiary of the trust, the trust shall be treated as the shareholder during that period.

(4) For purposes of this subdivision, the term "potential current beneficiary" means, with respect to any period, any person who at any time during that period is entitled to, or at the discretion of any person may receive, a distribution from the principal or income of the trust. If a trust disposes of all of the stock which it holds in an "S corporation," then, with respect to that corporation, the term "potential current beneficiary" does not include any person who first met the requirements of the preceding sentence during the 60-day period ending on the date of the disposition.

(d) For income years beginning on or after January 1, 1997, and before January 1, 1998, Section 1361 of the Internal Revenue Code, relating to S corporation defined, is modified to provide as follows:

(1) For purposes of this subdivision:

(A) Except as provided in subparagraph (B), the term "electing small business trust" means any trust if all of the following apply:

(i) The trust does not have as a beneficiary any person other than (I) an individual, (II) an estate, or (III) an organization described in Section 170(c)(2), (3), (4), or (5) of the Internal Revenue Code which holds a contingent interest and is not a potential current beneficiary.

(ii) No interest in the trust was acquired by purchase.

(iii) An election under this subdivision applies to the trust.

(B) The term "electing small business trust" shall not include either of the following:

(i) Any qualified Subchapter S trust (as defined in Section 1361(d)(3) of the Internal Revenue Code) if an election under Section 1361(d)(2) of the Internal Revenue Code applies to any corporation the stock of which is held by the qualified Subchapter S trust.

(ii) Any trust exempt from tax under Part 10 (commencing with Section 17001) or this part.

(C) For purposes of subparagraph (A), the term "purchase" means any acquisition if the basis of the property acquired is

determined under Section 1012 of the Internal Revenue Code or Section 24912 of this code.

(2) For purposes of this subdivision, the term "potential current beneficiary" means, with respect to any period, any person who at any time during that period is entitled to, or at the discretion of any person may receive, a distribution from the principal or income of the trust. If a trust disposes of all of the stock which it holds in an "S corporation," then, with respect to that corporation, the term "potential current beneficiary" does not include any person who first met the requirements of this paragraph during the 60-day period ending on the date of the disposition.

(3) (A) An election made by the trustee under Section 1361 of the Internal Revenue Code to be an electing small business trust for federal purposes shall be treated for purposes of this part as an election made by the trustee under this subdivision and a separate election under paragraph (3) of subdivision (e) of Section 23051.5 shall not be allowed. Any election made shall apply to the taxable year of the trust for which made and to all subsequent taxable years of the trust, unless revoked with the consent of the Franchise Tax Board.

(B) No election under this subdivision shall be allowed unless the trustee has made the election under Section 1361 of the Internal Revenue Code to be an electing small business trust for federal purposes.

(e) For income years beginning on or after January 1, 1998, Section 1361 of the Internal Revenue Code, relating to "S corporation" defined, is modified to provide as follows:

(1) For purposes of this subdivision:

(A) Except as provided in subparagraph (B), the term "electing small business trust" means any trust if all of the following apply:

(i) The trust does not have as a beneficiary any person other than (I) an individual, (II) an estate, or (III) an organization described in Section 170(c)(2), (3), (4), or (5) of the Internal Revenue Code.

(ii) No interest in the trust was acquired by purchase.

(iii) An election under this subdivision applies to the trust.

(B) The term "electing small business trust" shall not include any of the following:

(i) Any qualified Subchapter S trust (as defined in Section 1361(d)(3) of the Internal Revenue Code) if an election under Section 1361(d)(2) of the Internal Revenue Code applies to any corporation the stock of which is held by the qualified Subchapter S trust.

(ii) Any trust exempt from tax under Part 10 (commencing with Section 17001) or this part.

(C) For purposes of subparagraph (A), the term "purchase" means any acquisition if the basis of the property acquired is determined under Section 1012 of the Internal Revenue Code or Section 24912 of this code.

(2) (A) An election made by the trustee under Section 1361 of the Internal Revenue Code to be an electing small business trust for federal purposes shall be treated for purposes of this part as an election made by the trustee under this subdivision, and a separate election under paragraph (3) of subdivision (e) of Section 23051.5 shall not be allowed. Any election made shall apply to the taxable year of the trust for which made and to all subsequent taxable years of the trust, unless revoked with the consent of the Franchise Tax Board.

(B) No election under this subdivision shall be allowed unless the trustee has made the election under Section 1361 of the Internal Revenue Code to be an electing small business trust for federal purposes.

(f) For income years beginning on or after January 1, 1997, Section 1361(b) of the Internal Revenue Code, relating to small business corporations, is modified to provide as follows:

(1) For purposes of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and this part:

(A) A corporation that is a qualified Subchapter S subsidiary shall not be treated as a separate corporation, except as provided in subparagraph (B).

(B) There is hereby imposed a tax annually in an amount equal to the applicable amount specified in paragraph (1) of subdivision (d) of Section 23153 on a qualified Subchapter S subsidiary that is incorporated under the laws of this state, qualified to transact intrastate business in this state pursuant to Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code, or doing business in this state.

(C) Every qualified Subchapter S subsidiary described in subparagraph (B) shall be subject to the tax imposed under subparagraph (B) from the earlier of the date of incorporation, qualification, or commencing to do business in this state, until the effective date of dissolution or withdrawal as provided in Section 23331, or, if later, the date the corporation ceases to do business in this state.

(D) (i) All activities, assets, liabilities, including liability for the tax imposed under this subdivision, and items of income, deduction, and credit of a qualified Subchapter S subsidiary shall be treated as activities (including for purposes of Section 23101), assets, liabilities, and such items, as the case may be, of the "S corporation."

(ii) The tax imposed under this subdivision shall be due and payable on the 15th day of the fourth month of the income year of the "S corporation."

(2) For purposes of this subdivision, the term "qualified Subchapter S subsidiary" means any domestic corporation that is not an ineligible corporation, as defined in Section 1361(b)(2) of the Internal Revenue Code, if both of the following apply:

(A) One hundred percent of the stock of the corporation is held by the S corporation.

(B) The "S corporation" has in effect a valid election to treat the corporation as a qualified Subchapter S subsidiary for federal purposes.

(3) (A) An election made by the "S corporation" under Section 1361(b)(2) of the Internal Revenue Code to treat the corporation as a qualified Subchapter S subsidiary for federal purposes shall be treated for purposes of this part as an election made by the "S corporation" under this subdivision and a separate election under paragraph (3) of subdivision (e) of Section 23051.5 shall not be allowed.

(B) No election under this subdivision shall be allowed unless the "S corporation" has made the election under Section 1361(b)(2) of the Internal Revenue Code to treat the corporation as a qualified Subchapter S subsidiary for federal purposes.

(4) For purposes of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), or this part, if any corporation that was a qualified Subchapter S subsidiary ceases to meet the requirements of paragraph (2), that corporation shall be treated as a new corporation acquiring all of its assets, and assuming all of its liabilities, immediately before that cessation from the "S corporation" in exchange for its stock.

(5) If a corporations's status as a qualified Subchapter S subsidiary terminates, the corporation and any successor corporation shall not be treated as having in effect a valid election under subparagraph (B) of paragraph (2), or be eligible to make an election under Section 1362(a) of the Internal Revenue Code, before its fifth income year which begins after the first income year for which the termination is effective, unless the Franchise Tax Board consents to the election.

(6) Section 1361(b)(2)(A) of the Internal Revenue Code shall not apply.

(g) For income years beginning on or after January 1, 1997, Section 1361(b)(2)(B) of the Internal Revenue Code, relating to ineligible corporation defined, shall not apply and in lieu thereof, for purposes of Section 1361(b)(1) of the Internal Revenue Code, Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and this part, the term "ineligible corporation" shall include a savings and loan association, bank, or financial corporation which uses the reserve method of accounting for bad debts described in Section 24348.

(h) For income years beginning on or after January 1, 1997, Section 1361(c)(5)(B)(iii) of the Internal Revenue Code, relating to straight debt defined, is modified to include in the list of creditors contained therein, a person that is actively and regularly engaged in the business of lending money.

(i) For income years beginning on or after January 1, 1997, Section 1361(c)(6) of the Internal Revenue Code shall not apply.

SEC. 12. Section 23801 of the Revenue and Taxation Code is amended to read:

23801. (a) (1) A corporation may not elect to be treated as an "S corporation" unless it has in effect for federal purposes a valid election under Section 1362(a) of the Internal Revenue Code for the same year.

(2) For income years beginning in 1987, the following shall apply:

(A) A corporation that has in effect a valid federal election for the income year beginning in 1987, shall be deemed to have elected to be treated as an "S corporation" for purposes of this part, unless that corporation elects on its return to continue to be treated as a "C corporation" for purposes of this part.

(B) A corporation to which subparagraph (A) applies, but is not required to file a return under this part, may elect to be treated as a "C corporation" for purposes of this part in the form and in the manner as the Franchise Tax Board may prescribe.

(C) A corporation that is deemed to have elected to be treated as an "S corporation" under subparagraph (A) shall, for purposes of applying the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, and Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income, be deemed to have made the election to be treated as an "S corporation" on the same date as the date of its federal election under Section 1362(a) of the Internal Revenue Code.

(3) For income years beginning in 1988 or 1989, the following shall apply:

(A) A corporation that had in effect a valid federal election for the preceding year, but was a "C corporation" for purposes of this part for that preceding year, may elect to be treated as an "S corporation" for purposes of this part by making an election in accordance with the provisions of Section 1362 of the Internal Revenue Code in the form and in the manner as the Franchise Tax Board may prescribe.

(B) A corporation that did not have in effect a valid federal election for the preceding year and that makes a federal election for the income year under Section 1362(a) of the Internal Revenue Code shall be deemed to have made an election to be treated as an "S corporation" for purposes of this part on the same date as the date of its federal election, unless that corporation elects on its return to continue to be treated as a "C corporation" for purposes of this part.

(C) A corporation to which subparagraph (B) applies, but is not required to file a return under this part, may elect to be treated as a "C corporation" for purposes of this part in a form and manner as the Franchise Tax Board may prescribe.

(D) A corporation that elects to be treated as an "S corporation" under subparagraph (A) for an income year beginning in 1988 shall, for purposes of applying the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, and Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income, be deemed to have made the election to be treated as an "S corporation" on the same date as the date of

its federal election under Section 1362(a) of the Internal Revenue Code.

(4) For income years beginning on or after January 1, 1990, the following shall apply:

(A) An election under Section 1362(a) of the Internal Revenue Code, that is first effective for an income year beginning on or after January 1, 1990, shall be an election to which subdivision (e) of Section 23051.5 applies and shall be deemed to have been made for purposes of this part on the same date as the date of the federal election, unless the corporation files a California election under clause (ii) to be treated as a "C corporation" for purposes of this part.

(i) The federal "S" election shall be reported for purposes of this part in the form and manner as prescribed by the Franchise Tax Board no later than the last date allowed for filing the federal election under Section 1362(a) of the Internal Revenue Code for that income year.

(ii) The California election to be a "C corporation" may only be made by a corporation incorporated in California or qualified to do business in California and shall be made in the form and manner prescribed by the Franchise Tax Board no later than the last date allowed for filing the federal "S" election under Section 1362(a) of the Internal Revenue Code for that income year.

(B) A corporation that has in effect a valid election under Section 1362(a) of the Internal Revenue Code, but is a "C corporation" for purposes of this part, may elect to be treated as an "S corporation" by making an election in the form and manner as prescribed by the Franchise Tax Board at the time required for making an "S" election under Section 1362(a) of the Internal Revenue Code for that income year, unless prohibited from doing so by Section 1362(g) of the Internal Revenue Code, relating to election after termination.

(C) In the event a corporation which has in effect a valid election under Section 1362(a) of the Internal Revenue Code and is not doing business in California becomes subject to this part by qualifying to do business in California, the corporation is deemed to have made an election to be treated as an "S corporation" for the income year during which the corporation qualifies to do business in California, unless the corporation files a California election in accordance with clause (ii) to be treated as a "C corporation" for that income year.

(i) The federal "S" election shall be reported for purposes of this part within two and one-half months after qualifying to do business in California in the form and manner as prescribed by the Franchise Tax Board.

(ii) The California election to be a "C corporation" shall be made in the form and manner as prescribed by the Franchise Tax Board no later than the following:

(I) For an income year beginning in 1990, two and one-half months after qualifying to do business in California.

(II) For an income year beginning on or after January 1, 1991, the last date allowed for filing a federal "S" election under Section 1362(a) of the Internal Revenue Code for that income year.

(D) (i) A corporation that is not qualified to do business in California, but is treated as an "S corporation" for federal purposes, shall be treated as an "S corporation" for purposes of this part, and its shareholders shall be treated as shareholders of an "S corporation."

(ii) If a corporation described in clause (i) elected to be treated as a "C corporation" under this section prior to its amendment by the act adding this paragraph during the 1989–90 Regular Session, that election shall be revoked for income years beginning on or after January 1, 1990. The corporation shall be treated as an "S corporation" for purposes of this part, and its shareholders shall be treated as shareholders of an "S corporation."

(E) For purposes of this section, "qualified to do business in California" or "qualifying to do business in California" means incorporating or obtaining a certificate of qualification pursuant to the Corporations Code.

(F) For purposes of this section:

(i) A timely election to be treated as a "C corporation" shall be treated as a revocation and Section 1362(g) of the Internal Revenue Code, relating to election after termination, shall apply.

(ii) An untimely election to be treated as a "C corporation" shall be null and void and shall not be applied to either the current or any subsequent income year.

(5) For income years beginning on or after January 1, 1997, the provisions in paragraph (4) shall apply, subject to the following modifications:

(A) A corporation which elects "S corporation" status under the provisions of Section 1316 of the Small Business Job Protection Act of 1996 (P.L. 104-188) for federal purposes but which is not qualified to be an "S corporation" under subdivision (g) of Section 23800.5, shall not be an "S corporation" for purposes of Part 10 (commencing with Section 17001) and this part.

(B) (i) A corporation which becomes an "S corporation" for an income year beginning before January 1, 1997, under the provisions of Section 1305 of the Small Business Job Protection Act of 1996 (P.L. 104-188) for federal purposes, shall become an "S corporation" for purposes of Part 10 (commencing with Section 17001) and this part for its first income year beginning on or after January 1, 1997, unless a timely election to continue as a "C corporation" is made.

(ii) For purposes of clause (i), an election shall be considered timely if made no later than the earlier of the date that is 180 days after the date of enactment of the act adding this paragraph or the due date, without regard to extensions, of the return for its first income year beginning on or after January 1, 1997.

(C) (i) A corporation which makes a valid federal election to be an "S corporation" during the period in 1997 before the date of

enactment of the act adding this paragraph and which would not qualify to be an "S corporation" under this part on the date of the federal election shall become an "S corporation" for purposes of Part 10 (commencing with Section 17001) and this part for its first income year beginning on or after January 1, 1997, unless a timely election to continue as a "C corporation" is made.

(ii) For purposes of clause (i), an election shall be considered timely if made no later than the earlier of the date that is 180 days after the date of enactment of the act adding this paragraph or the due date, without regard to extensions, of the return for its first income year beginning on or after January 1, 1997.

(b) If a corporation subject to tax under this part elects to be treated as an "S corporation" and has one or more shareholders who are nonresidents of this state or is a trust with a nonresident fiduciary, each of the following shall be required:

(1) Each nonresident shareholder or fiduciary shall file with the return a statement of consent by that shareholder or fiduciary to be subject to the jurisdiction of the State of California to tax the shareholder's pro rata share of the income attributable to California sources.

(2) An "S corporation" shall include in its return for each income year a list of shareholders in the form and in the manner prescribed by the Franchise Tax Board.

(3) Failure to meet the requirements of this subdivision shall be grounds for retroactive revocation by the Franchise Tax Board of the election pursuant to this chapter.

(c) Except as provided in subdivision (d), a corporation that makes a valid election to be treated as an "S corporation" for purposes of this part shall not be included in a combined report pursuant to Article 1 (commencing with Section 25101) of Chapter 17.

(d) (1) In cases where the Franchise Tax Board determines that the reported income or loss of a group of commonly owned or controlled corporations (within the meaning of Section 25105), which includes one or more corporations electing to be treated as an "S corporation" under Chapter 4.5 (commencing with Section 23800), does not clearly reflect income (or loss) of a member of that group or represents an evasion of tax by one or more members of that group, and the Franchise Tax Board determines that the comparable uncontrolled price method prescribed by regulations pursuant to Section 482 of the Internal Revenue Code cannot practically be applied, the Franchise Tax Board may, in lieu of other methods prescribed by regulations pursuant to Section 482 of the Internal Revenue Code, apply methods of unitary combination, pursuant to Article 1 (commencing with Section 25101) of Chapter 17, to properly reflect the income or loss of the members of the group.

(2) The application of the provisions of this subdivision shall not affect the election of any corporation to be treated as an "S corporation."

(e) The tax for a "C corporation" for a short year shall be determined in accordance with Chapter 13 (commencing with Section 24631), in lieu of Section 1362(e)(5) of the Internal Revenue Code.

(f) (1) A termination of a federal election pursuant to Section 1362(d) of the Internal Revenue Code, that is not an inadvertent termination pursuant to Section 1362(f) of the Internal Revenue Code, shall simultaneously terminate the "S corporation" election for purposes of Part 10 (commencing with Section 17001) and this part.

(2) A federal termination by revocation shall be effective for purposes of this part and shall be reported to the Franchise Tax Board in the form and manner prescribed by the Franchise Tax Board no later than the last date allowed for filing federal termination for that year under Section 1362(d) of the Internal Revenue Code.

(3) A corporation which is qualified to do business in California and has in effect a valid "S" election under Section 1362(a) of the Internal Revenue Code, may revoke its "S" election for purposes of this part without revoking its federal election. The revocation for purposes of this part shall be made by providing a written notification to the Franchise Tax Board in the form and manner prescribed by the Franchise Tax Board which includes the California corporation number and meets the requirements of Section 1362(d)(1) of the Internal Revenue Code.

(g) For income years beginning on or after January 1, 1990, if a corporation, which has in effect a valid "S" election under Section 1362(a) of the Internal Revenue Code, fails to make a "C corporation" election under clause (ii) of subparagraphs (A) and (C) of paragraph (4) of subdivision (a) or to terminate by revocation under paragraph (3) of subdivision (f), the corporation shall be treated as an "S corporation" pursuant to subparagraph (A) of paragraph (4) of subdivision (a).

(h) For income years beginning on or after January 1, 1997, for purposes of subparagraph (F) of paragraph (4) of subdivision (a) of this section and Section 1362(g) of the Internal Revenue Code, relating to election after termination, any termination under Section 1362(d) of the Internal Revenue Code or election to be treated as a "C corporation" under subparagraph (A) or (C) of paragraph (4) of subdivision (a), or to terminate by revocation under paragraph (3) of subdivision (f) in an income year beginning before January 1, 1997, shall not be taken into account.

(i) For income years beginning on or after January 1, 1997:

(1) Section 1362(b) of the Internal Revenue Code is modified to provide that if an election under Section 1362(a) of the Internal Revenue Code is made for any income year, determined without regard to Section 1362(b)(3) of the Internal Revenue Code, after the

date prescribed by this subdivision for making the election for the income year or no election is made for any income year, and the Franchise Tax Board determines that there was reasonable cause for the failure to timely make the election, the Franchise Tax Board may treat that election as timely made for the income year, and Section 1362(b)(3) of the Internal Revenue Code shall not apply.

(2) Section 1362(f) of the Internal Revenue Code, relating to inadvertent terminations, is modified to provide that notwithstanding circumstances resulting in the ineffectiveness or termination of an election under Section 1362(a) of the Internal Revenue Code, a corporation shall be treated as an "S corporation" during the period specified by the Franchise Tax Board if all of the following apply:

(A) The election by any corporation was not effective for the income year for which made, determined without regard to Section 1362(b)(2) of the Internal Revenue Code, by reason of a failure to meet the requirements of Section 1361(b) of the Internal Revenue Code or to obtain shareholder consents, or was terminated under Section 1362(d)(2) or (3) of the Internal Revenue Code.

(B) The Franchise Tax Board determines that the circumstances resulting in the ineffectiveness or termination of the election were inadvertent.

(C) No later than a reasonable period of time after discovery of the circumstances resulting in that ineffectiveness or termination, steps were taken so that the corporation is a small business corporation, or to acquire the required shareholder consents.

(D) The corporation, and each person who was a shareholder in the corporation at any time during the period specified pursuant to this subdivision, agrees to make the adjustments, consistent with the treatment of the corporation as an "S corporation," as may be required by the Franchise Tax Board with respect to that period.

(j) Section 1362(d)(3) of the Internal Revenue Code, relating to termination where passive investment income exceeds 25 percent of gross receipts for three consecutive years and corporation has Subchapter C earnings and profits, is modified to provide that if an "S corporation" holds stock in a "C corporation" meeting the requirements of Section 1504(a)(2) of the Internal Revenue Code, the term "passive investment income" shall not include dividends for that "C corporation" to the extent the dividends are attributable to the earnings and profits of that "C corporation" derived from the active conduct of a trade or business.

SEC. 13. Section 23802 of the Revenue and Taxation Code is amended to read:

23802. (a) Section 1363(a) of the Internal Revenue Code, relating to the taxability of an "S corporation," shall not be applicable.

(b) Corporations qualifying under this chapter shall continue to be subject to the taxes imposed under Chapter 2 (commencing with

Section 23101) and Chapter 3 (commencing with Section 23501), except as follows:

(1) (A) The tax imposed under Section 23151 or 23501 shall be imposed at a rate of $1^1/_2$ percent rather than the rate specified in those sections.

(B) For income years beginning on or after January 1, 1997, the following tax rates shall be substituted for the "$1^1/_2$ percent" rate specified by subparagraph (A):

(i) One and six-tenths percent for income years beginning on or after January 1, 1997, and before January 1, 1998.

(ii) One and sixty-five hundredths percent for income years beginning on or after January 1, 1998, and before January 1, 1999.

(iii) One and seven-tenths percent for income years beginning on or after January 1, 1999, and before January 1, 2000.

(iv) One and six-tenths percent for income years beginning on or after January 1, 2000.

(2) In the case of an "S corporation" which is also a financial corporation, the rate of tax specified in paragraph (1) shall be increased by the excess of the rate imposed under Section 23183 over the rate imposed under Section 23151.

(c) An "S corporation" shall be subject to the minimum franchise tax imposed under Section 23153.

(d) (1) For purposes of subdivision (b), an "S corporation" shall be allowed a deduction under Section 24416 or 24416.1 (relating to net operating loss deductions), but only with respect to losses incurred during periods in which the corporation had in effect a valid election to be treated as an "S corporation" for purposes of this part.

(2) Section 1371(b) of the Internal Revenue Code, relating to denial of carryovers between "C years" and "S years," shall apply for purposes of the tax imposed under subdivision (b), except as provided in paragraph (1).

(3) The provisions of this subdivision shall not affect the amount of any item of income or loss computed in accordance with the provisions of Section 1366 of the Internal Revenue Code, relating to pass-thru items to shareholders.

(4) For purposes of subdivision (b) of Section 17276, relating to limitations on loss carryovers, losses passed through to shareholders of an "S corporation," to the extent otherwise allowable without application of that subdivision, shall be fully included in the net operating loss of that shareholder and then that subdivision shall be applied to the entire net operating loss.

(e) For purposes of computing the taxes specified in subdivision (b), an "S corporation" shall be allowed a deduction from income for built-in gains and passive investment income for which a tax has been imposed under this part in accordance with the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, or Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income.

(f) For purposes of computing taxes imposed under this part, as provided in subdivision (b)—

(1) An "S corporation" shall compute its deductions for amortization and depreciation in accordance with the provisions of Part 10 (commencing with Section 17001) of Division 2.

(2) The provisions of Section 465 of the Internal Revenue Code, relating to limitation of deductions to the amount at risk, shall be applied in the same manner as in the case of an individual.

(3) (A) The provisions of Section 469 of the Internal Revenue Code, relating to limitations on passive activity losses and credits, shall be applied in the same manner as in the case of an individual. For purposes of the tax imposed under Section 23151 or 23501, as modified by this section, material participation shall be determined in accordance with Section 469(h) of the Internal Revenue Code, relating to certain closely held "C corporations" and personal service corporations.

(B) For purposes of this paragraph, the "adjusted gross income" of the "S corporation" shall be equal to its "net income," as determined under Section 24341 with the modifications required by this subdivision, except that no deduction shall be allowed for contributions allowed by Section 24357.

(4) The exclusion provided under Section 18152.5 shall not be allowed to an "S corporation."

(g) The provisions of Section 1363(d) of the Internal Revenue Code, relating to recapture of LIFO benefits, shall be modified for purposes of this part to refer to Section 19102 in lieu of Section 6601 of the Internal Revenue Code.

SEC. 14. Section 23802.5 is added to the Revenue and Taxation Code, to read:

23802.5. (a) For income years beginning on or after January 1, 1997, Section 1366(a)(1) of the Internal Revenue Code, relating to determination of shareholder's tax liability, is modified to apply to the final taxable year of a trust or estate which terminates before the end of the corporation's income year.

(b) For income years beginning on or after January 1, 1997, Section 1366(d)(1)(A) of the Internal Revenue Code, relating to losses and deductions that cannot exceed shareholder's basis in stock and debt, is modified to additionally provide that the adjusted basis of a shareholder's stock in the S corporation is to be decreased by distributions by the corporation that were not includable in the income of the shareholder by reason of Section 1368 of the Internal Revenue Code.

(c) For income years beginning on or after January 1, 1997, Section 1366(d)(3) of the Internal Revenue Code, relating to carryover of disallowed losses and deductions to post-termination transition period, is modified to provide that to the extent that any increase in adjusted basis described in Section 1366(d)(3)(B) of the Internal Revenue Code would have increased the shareholder's

amount at risk under Section 465 if the increase had occurred on the day preceding the commencement of the post-termination transition period, rules similar to the rules described in Section 1366(d)(3)(A) to (C), inclusive, of the Internal Revenue Code shall apply to any losses disallowed by reason of Section 465(a) of the Internal Revenue Code.

SEC. 15. Section 23804 is added to the Revenue and Taxation Code, to read:

23804. For decedents dying after December 31, 1996, Section 1367(b) of the Internal Revenue Code, relating to adjustments to basis of stock of shareholders, etc., is modified to provide as follows:

(a) If any person acquires stock in an "S corporation" by reason of the death of a decedent or by bequest, devise, or inheritance, Section 691 of the Internal Revenue Code shall be applied with respect to any item of income of the "S corporation" in the same manner as if the decedent had held directly the decedent's pro rata share of that item.

(b) The basis determined under Section 1014 of the Internal Revenue Code of any stock in an "S corporation" shall be reduced by the portion of the value of the stock that is attributable to items constituting income in respect of the decedent.

SEC. 16. Section 23804.5 is added to the Revenue and Taxation Code to read:

23804.5. For income years beginning on or after January 1, 1997:

(a) Section 1368(d) of the Internal Revenue Code, relating to certain adjustments taken into account, is modified to provide that in the case of any distribution made during any income year, the adjusted basis of the stock shall be determined with regard to the adjustments provided in Section 1367(a)(1) of the Internal Revenue Code.

(b) Section 1368(e)(1) of the Internal Revenue Code, relating to accumulated adjustments account, is modified to provide as follows:

(1) In applying Section 1368 of the Internal Revenue Code to distributions made during any income year, the amount in the accumulated adjustments account as of the close of the income year shall be determined without regard to any net negative adjustment for that income year.

(2) For purposes of paragraph (1), the term "net negative adjustment" means, with respect to any income year, the excess, if any, of the reduction in the account for the income year, other than for distributions, over the increase in that account for that income year.

(3) Section 1368(e)(1)(A) of the Internal Revenue Code shall be modified to take into account the provisions of this subdivision.

(4) Section 1368(e)(1)(A) of the Internal Revenue Code shall be modified to refer to Section 1367(a)(2) of the Internal Revenue Code in lieu of Section 1367(b)(2)(A) of the Internal Revenue Code.

SEC. 17. Section 23806 of the Revenue and Taxation Code is amended to read:

23806. (a) For income years beginning on or after January 1, 1997, Section 1371(a) of the Internal Revenue Code, relating to application of Subchapter C rules, is modified to provide that, except as otherwise provided in this part or Title 26 of the United States Code, and except to the extent inconsistent with this chapter or Subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code, Subchapter C of Chapter 1 of Subtitle A of the Internal Revenue Code shall apply to an "S corporation" and its shareholders.

(b) Notwithstanding subdivisions (a) and (e) of Section 23051.5, an election under Section 338 of the Internal Revenue Code, relating to certain stock purchases treated as asset acquisitions, for federal purposes shall be treated as an election for purposes of this part and a separate election under paragraph (3) of subdivision (e) of Section 23051.5 shall not be allowed.

(c) Section 1371(d) of the Internal Revenue Code shall not be applicable.

SEC. 18. Section 23813 is added to the Revenue and Taxation Code, to read:

23813. (a) For income years beginning on or after January 1, 1997, Section 1377(a)(2) of the Internal Revenue Code, relating to pro rata share, is modified to provide as follows:

(1) As prescribed in regulations, if any shareholder terminates the shareholder's interest in the corporation during the income year and all affected shareholders and the corporation agree to the application of this subdivision, Section 1377(a)(1) of the Internal Revenue Code shall be applied to the affected shareholders as if the income year consisted of two income years the first of which ends on the date of the termination.

(2) For purposes of subdivision (a) and Section 1377 of the Internal Revenue Code, the term "affected shareholders" means the shareholder whose interest is terminated and all shareholders to whom that shareholder has transferred shares during the income year. If that shareholder has transferred shares to the corporation, the term "affected shareholders" shall include all persons who are shareholders during the income year.

(b) For income years beginning on or after January 1, 1997, Section 1377(b) of the Internal Revenue Code, relating to post-termination transition period, is modified to provide as follows:

(1) The term "post-termination transition period" includes the 120-day period beginning on the date of any determination pursuant to an audit of the taxpayer which follows the termination of the corporation's election and which adjusts a Subchapter S item of income, loss, or deduction of the corporation arising during the S period, as defined in Section 1368(e)(2) of the Internal Revenue Code.

(2) Section 1377(b)(2) of the Internal Revenue Code, relating to determination defined, is modified to provide that for purposes of paragraph (1) and Section 1377(b)(1) of the Internal Revenue Code, the term "determination" means either of the following:

(A) (i) A determination as defined in Section 1313(a) of the Internal Revenue Code.

(ii) A decision by the State Board of Equalization that has become final.

(iii) A closing agreement made under Article 6 (commencing with Section 19441) of Chapter 6 of Part 10.2.

(iv) A final disposition by the Franchise Tax Board of a claim for refund.

(B) An agreement between the corporation and the Secretary of the Treasury or the Franchise Tax Board that the corporation failed to qualify as an "S corporation."

SEC. 19. Section 24611 of the Revenue and Taxation Code is amended to read:

24611. (a) Section 404(k) of the Internal Revenue Code, relating to dividends paid deduction, shall apply to income years beginning on or after January 1, 1996.

(b) For income years beginning on or after January 1, 1998, Section 404(a)(9) of the Internal Revenue Code, relating to certain contributions to employee ownership plans, is modified to provide that Section 404(a)(9) of the Internal Revenue Code shall not apply to an "S corporation."

(c) For income years beginning on or after January l, 1998, Section 404(k)(1) of the Internal Revenue Code, relating to deduction for dividends on certain employer securities, is modified to provide that the phrase "a corporation" shall read "a C corporation."

SEC. 20. Section 24954 is added to the Revenue and Taxation Code, to read:

24954. (a) Section 1042 of the Internal Revenue Code, relating to sales of stock to employee stock ownership plans or certain cooperatives, shall apply to income years beginning on or after January 1, 1996.

(b) For income years beginning on or after January 1, 1998, the term "domestic corporation" shall mean "domestic C corporation."

SEC. 21. Section 24990.4 is added to the Revenue and Taxation Code, to read:

24990.4. For income years beginning on or after January 1, 1997:

(a) Section 1237(a) of the Internal Revenue Code, relating to real property subdivided for sale, is modified to provide that the term "other than a corporation" in the material preceding Section 1237(a)(1) of the Internal Revenue Code shall instead mean "other than a C corporation."

(b) Section 1237(a)(2)(A) of the Internal Revenue Code, relating to real property subdivided for sale, is modified to provide that an improvement shall be deemed to be made by the taxpayer if that

improvement was made by an "S corporation" that included the taxpayer as a shareholder.

SEC. 22. (a) This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, unless otherwise specifically provided, the provisions of this act shall be applied to taxable years beginning on or after January 1, 1997.

(b) If a taxpayer has, at any time, made an election for federal purposes under Section 312(d)(2) of the Taxpayer Relief Act of 1997 (P.L. 105-34), relating to sales before date of enactment, or Section 312(d)(4) of that act, relating to binding contracts, to not have the amendments made by Section 312 of the Taxpayers Relief Act of 1997 (P.L. 105-34) apply to a sale or exchange, Sections 1, 4, and 6 of this act shall not apply to that sale or exchange, a separate election for state purposes shall not be allowed under paragraph (3) of subdivision (e) of Section 17024.5, and the federal election shall be binding for purposes of this part.

CHAPTER 611

An act to amend Sections 17008.5, 17020.6, 17024.5, 17041, 17052.12, 17054, 17062, 17063, 17072, 17077, 17085, 17088, 17139, 17250, 17273, 17279, 17507, 17561, 17750, 17860, 18037, 18180, 18601, 18624, 18645, 19144, 19164, 19184, 23038.5, 23045, 23453, 23456, 23457, 23609, 23732, 23801, 23802, 23806, 24326, 24343.3, 24349, 24355, 24355.5, 24357, 24443, 24692, 24870, 24916, and 24993 of, to amend the heading of Chapter 14.5 (commencing with Section 24870) of Part 11 of, to add Sections 17088.3, 17132.5, 17154, 17215, 17250.5, 17251.5, 17270.5, 17275.5, 17278.5, 17731.5, 18044, 18152, 18648.5, 19136.2, 19136.3, 19141.2, 19182.5, 19365, 23800.5, 23813, 24272.5, 24343.7, 24429, 24875, 24949.5, 24954, and 24956 to, to repeal Sections 17131.5, 17132, 17137, 17138.5, 17141.5, 17150, 17201.5, 17210, 17213, 17249, 17267, 17283, 17748, 18035, 18040, 18060, 18166, 18173, 24371.5, 24966.3, 24971, 24990.8, and 24990.9 of, and to repeal and add Sections 17255, 17271, 23701h, 24372.5, and 24947 of, the Revenue and Taxation Code, and to amend Sections 928.5 and 934 of the Unemployment Insurance Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 1, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Section 17008.5 of the Revenue and Taxation Code is amended to read:

17008.5. Section 7704 of the Internal Revenue Code, relating to certain publicly traded partnerships treated as corporations, shall apply, except as otherwise provided.

(a) Section 7704(a) of the Internal Revenue Code shall not apply to an electing 1987 partnership (as defined in Section 23038.5) which is subject to the tax imposed by Section 23038.5.

(b) The amendment made to this section by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 1998.

SEC. 1.5. Section 17020.6 of the Revenue and Taxation Code is amended to read:

17020.6. For purposes of this part:

(a) Section 7702 of the Internal Revenue Code, relating to life insurance contracts, shall apply, except as otherwise provided.

(b) Section 7702A of the Internal Revenue Code, relating to modified endowment contracts, shall apply, except as otherwise provided.

(c) Section 7702B of the Internal Revenue Code, relating to treatment of qualified long-term care insurance, shall apply, except as otherwise provided.

SEC. 2. Section 17024.5 of the Revenue and Taxation Code is amended to read:

17024.5. (a) (1) Unless otherwise specifically provided, the terms "Internal Revenue Code," "Internal Revenue Code of 1954," or "Internal Revenue Code of 1986," for purposes of this part, mean Title 26 of the United States Code, including all amendments thereto as enacted on the specified date for the applicable taxable year as follows:

Taxable Year	Specified Date of Internal Revenue Code Sections
(A) For taxable years beginning on or after January 1, 1983, and on or before December 31, 1983	January 15, 1983
(B) For taxable years beginning on or after January 1, 1984, and on or before December 31, 1984	January 1, 1984
(C) For taxable years beginning on or after January 1, 1985, and on or before December 31, 1985	January 1, 1985
(D) For taxable years beginning on or after January 1, 1986, and on or before December 31, 1986	January 1, 1986

(E) For taxable years beginning on or after January 1, 1987, and on or before December 31, 1988 ..... January 1, 1987

(F) For taxable years beginning on or after January 1, 1989, and on or before December 31, 1989 ..... January 1, 1989

(G) For taxable years beginning on or after January 1, 1990, and on or before December 31, 1990 ..... January 1, 1990

(H) For taxable years beginning on or after January 1, 1991, and on or before December 31, 1991 ..... January 1, 1991

(I) For taxable years beginning on or after January 1, 1992, and on or before December 31, 1992 ..... January 1, 1992

(J) For taxable years beginning on or after January 1, 1993, and on or before December 31, 1996 ..... January 1, 1993

(K) For taxable years beginning on or after January 1, 1997 ..... January 1, 1997

(2) Unless otherwise specifically provided, for federal laws enacted on or after January 1, 1987, and on or before the specified date for the taxable year, uncodified provisions that relate to provisions of the Internal Revenue Code that are incorporated for purposes of this part shall be applicable to the same taxable years as the incorporated provisions.

(3) Subtitle G (Tax Technical Corrections) and Part I of Subtitle H (Repeal of Expired or Obsolete Provisions) of the Revenue Reconciliation Act of 1990 (Public Law 101-508) modified numerous provisions of the Internal Revenue Code and provisions of prior federal acts, some of which are incorporated by reference into this part. Unless otherwise provided, the provisions described in the preceding sentence, to the extent that they modify provisions that are incorporated into this part, are declaratory of existing law and shall be applied in the same manner and for the same periods as specified in the Revenue Reconciliation Act of 1990.

(b) Unless otherwise specifically provided, when applying any provision of the Internal Revenue Code for purposes of this part, a reference to any of the following shall not be applicable for purposes of this part:

(1) Except as provided in Chapter 4.5 (commencing with Section 23800) of Part 11 of Division 2, an electing small business corporation, as defined in Section 1361(b) of the Internal Revenue Code.

(2) Domestic international sales corporations (DISC), as defined in Section 992(a) of the Internal Revenue Code.

(3) A personal holding company, as defined in Section 542 of the Internal Revenue Code.

(4) A foreign personal holding company, as defined in Section 552 of the Internal Revenue Code.

(5) A foreign investment company, as defined in Section 1246(b) of the Internal Revenue Code.

(6) A foreign trust, as defined in Section 679 of the Internal Revenue Code.

(7) Foreign income taxes and foreign income tax credits.

(8) Section 911 of the Internal Revenue Code, relating to United States citizens living abroad.

(9) A foreign corporation, except that Section 367 of the Internal Revenue Code shall be applicable.

(10) Federal tax credits and carryovers of federal tax credits.

(11) Nonresident aliens.

(12) Deduction for personal exemptions, as provided in Section 151 of the Internal Revenue Code.

(13) The tax on generation-skipping transfers imposed by Section 2601 of the Internal Revenue Code.

(14) The tax, relating to estates, imposed by Section 2001 or 2101 of the Internal Revenue Code.

(c) (1) The provisions contained in Sections 41 to 44, inclusive, and 172 of the Tax Reform Act of 1984 (Public Law 98-369), relating to treatment of debt instruments, shall not be applicable for taxable years beginning before January 1, 1987.

(2) The provisions contained in Public Law 99-121, relating to the treatment of debt instruments, shall not be applicable for taxable years beginning before January 1, 1987.

(3) For each taxable year beginning on or after January 1, 1987, the provisions referred to by paragraphs (1) and (2) shall be applicable for purposes of this part in the same manner and with respect to the same obligations as the federal provisions, except as otherwise provided in this part.

(d) When applying the Internal Revenue Code for purposes of this part, regulations promulgated in final form or issued as temporary regulations by "the secretary" shall be applicable as regulations under this part to the extent that they do not conflict with this part or with regulations issued by the Franchise Tax Board.

(e) Whenever this part allows a taxpayer to make an election, the following rules shall apply:

(1) A proper election filed with the Internal Revenue Service in accordance with the Internal Revenue Code or regulations issued by "the secretary" shall be deemed to be a proper election for purposes of this part, unless otherwise provided in this part or in regulations issued by the Franchise Tax Board.

(2) A copy of that election shall be furnished to the Franchise Tax Board upon request.

(3) To obtain treatment other than that elected for federal purposes, a separate election shall be filed at the time and in the manner required by the Franchise Tax Board.

(f) Whenever this part allows or requires a taxpayer to file an application or seek consent, the rules set forth in subdivision (e) shall be applicable with respect to that application or consent.

(g) When applying the Internal Revenue Code for purposes of determining the statute of limitations under this part, any reference to a period of three years shall be modified to read four years for purposes of this part.

(h) When applying, for purposes of this part, any section of the Internal Revenue Code or any applicable regulation thereunder, all of the following shall apply:

(1) References to "adjusted gross income" shall mean the amount computed in accordance with Section 17072, except as provided in paragraph (2).

(2) References to "adjusted gross income" for purposes of computing limitations based upon adjusted gross income, shall mean the amount required to be shown as adjusted gross income on the federal tax return for the same taxable year.

(3) Any reference to "subtitle" or "chapter" shall mean this part.

(4) The provisions of Section 7806 of the Internal Revenue Code, relating to construction of title, shall apply.

(5) Any provision of the Internal Revenue Code that becomes operative on or after the specified date for that taxable year shall become operative on the same date for purposes of this part.

(6) Any provision of the Internal Revenue Code that becomes inoperative on or after the specified date for that taxable year shall become inoperative on the same date for purposes of this part.

(7) Due account shall be made for differences in federal and state terminology, effective dates, substitution of "Franchise Tax Board" for "secretary" when appropriate, and other obvious differences.

(i) Any reference to a specific provision of the Internal Revenue Code shall include modifications of that provision, if any, in this part.

SEC. 3. Section 17041 of the Revenue and Taxation Code is amended to read:

17041. (a) (1) There shall be imposed for each taxable year upon the entire taxable income of every resident of this state, except the head of a household as defined in Section 17042, taxes in the following amounts and at the following rates upon the amount of taxable income:

If the taxable income is:	The tax is:
Not over $3,650	1% of the taxable income
Over $3,650 but not over $8,650	$36.50 plus 2% of the excess over $3,650

Over $8,650 but not over $13,650	$136.50 plus 4% of the excess over $8,650
Over $13,650 but not over $18,950	$336.50 plus 6% of the excess over $13,650
Over $18,950 but not over $23,950	$654.50 plus 8% of the excess over $18,950
Over $23,950	$1,054.50 plus 9.3% of the excess over $23,950

(2) (A) For any taxable year beginning on or after January 1, 1991, and before January 1, 1996, the income tax brackets and rates set forth in paragraph (1) shall be modified by each of the following:

(i) For that portion of taxable income that is over one hundred thousand dollars ($100,000) but not over two hundred thousand dollars ($200,000), the tax rate is 10 percent of the excess over one hundred thousand dollars ($100,000).

(ii) For that portion of taxable income that is over two hundred thousand dollars ($200,000), the tax rate is 11 percent of the excess over two hundred thousand dollars ($200,000).

(B) The income tax brackets specified in this paragraph shall be recomputed, as otherwise provided in subdivision (h), only for taxable years beginning on and after January 1, 1992.

(b) There shall be imposed for each taxable year upon the entire taxable income of every nonresident or part-year resident which is derived from sources in this state, except the head of a household as defined in Section 17042, a tax which shall be equal to the tax computed under subdivision (a) as if the nonresident or part-year resident were a resident multiplied by the ratio of California adjusted gross income to total adjusted gross income from all sources. For purposes of computing the tax under subdivision (a) and gross income from all sources, the net operating loss deduction provided in Section 172 of the Internal Revenue Code, as modified by Section 17276, shall be computed as if the taxpayer was a resident for all prior years.

(c) (1) There shall be imposed for each taxable year upon the entire taxable income of every resident of this state, when the resident is the head of a household, as defined in Section 17042, taxes in the following amounts and at the following rates upon the amount of taxable income:

If the taxable income is:	The tax is:
Not over $7,300	1% of the taxable income

Over $7,300 but not over $17,300	$73 plus 2% of the excess over $7,300
Over $17,300 but not over $22,300	$273 plus 4% of the excess over $17,300
Over $22,300 but not over $27,600	$473 plus 6% of the excess over $22,300
Over $27,600 but not over $32,600	$791 plus 8% of the excess over $27,600
Over $32,600	$1,191 plus 9.3% of the excess over $32,600

(2) (A) For any taxable year beginning on or after January 1, 1991, and before January 1, 1996, the income tax brackets and rates set forth in paragraph (1) shall be modified by each of the following:

(i) For that portion of taxable income that is over one hundred thirty-six thousand one hundred fifteen dollars ($136,115) but not over two hundred seventy-two thousand two hundred thirty dollars ($272,230), the tax rate is 10 percent of the excess over one hundred thirty-six thousand one hundred fifteen dollars ($136,115).

(ii) For that portion of taxable income that is over two hundred seventy-two thousand two hundred thirty dollars ($272,230), the tax rate is 11 percent of the excess over two hundred seventy-two thousand two hundred thirty dollars ($272,230).

(B) The income tax brackets specified in this paragraph shall be recomputed, as otherwise provided in subdivision (h), only for taxable years beginning on and after January 1, 1992.

(d) There shall be imposed for each taxable year upon the entire taxable income of every nonresident or part-year resident which is derived from sources within this state when the nonresident or part-year resident is the head of a household, as defined in Section 17042, a tax which shall be equal to the tax computed under subdivision (c) as if the nonresident or part-year resident were a resident multiplied by the ratio of California adjusted gross income to total adjusted gross income from all sources. For purposes of computing the tax under subdivision (c) and gross income from all sources, the net operating loss deduction provided in Section 172 of the Internal Revenue Code, as modified by Section 17276, shall be computed as if the taxpayer was a resident for all prior years.

(e) There shall be imposed for each taxable year upon the taxable income of every estate, trust, or common trust fund taxes equal to the amount computed under subdivision (a) for an individual having the same amount of taxable income.

(f) The tax imposed by this part is not a surtax.

(g) (1) Section 1 (g) of the Internal Revenue Code, relating to certain unearned income of minor children taxed as if the parent's income, shall apply, except as otherwise provided.

(2) Section 1(g)(7)(B)(ii)(II) of the Internal Revenue Code, relating to income included on parent's return, is modified, for purposes of this part, by substituting "1 percent" for "15 percent."

(h) For each taxable year beginning on or after January 1, 1988, the Franchise Tax Board shall recompute the income tax brackets prescribed in subdivisions (a) and (c). That computation shall be made as follows:

(1) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index for all items from June of the prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.

(2) The Franchise Tax Board shall do both of the following:

(A) Compute an inflation adjustment factor by adding 100 percent to the percentage change figure that is furnished pursuant to paragraph (1) and dividing the result by 100.

(B) Multiply the preceding taxable year income tax brackets by the inflation adjustment factor determined in subparagraph (A) and round off the resulting products to the nearest one dollar ($1).

(i) (1) For purposes of this section, the term "California adjusted gross income" includes each of the following:

(A) For any part of the taxable year during which the taxpayer was a resident of this state (as defined by Section 17014), all items of adjusted gross income, regardless of source.

(B) For any part of the taxable year during which the taxpayer was not a resident of this state, only those items of adjusted gross income which were derived from sources within this state, determined in accordance with Chapter 11 (commencing with Section 17951).

(2) For purposes of computing "California adjusted gross income" under paragraph (1), the amount of any net operating loss sustained in any taxable year during any part of which the taxpayer was not a resident of this state shall be limited to the sum of the following:

(A) The amount of the loss attributable to the part of the taxable year in which the taxpayer was a resident.

(B) The amount of the loss which, during the part of the taxable year the taxpayer is not a resident, is attributable to California source income and deductions allowable in arriving at adjusted gross income.

SEC. 4. Section 17052.12 of the Revenue and Taxation Code is amended to read:

17052.12. For each taxable year beginning on or after January 1, 1987, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) for the taxable year an amount determined

in accordance with Section 41 of the Internal Revenue Code, except as follows:

(a) For each taxable year beginning before January 1, 1997, the reference to "20 percent" in Section 41(a)(1) of the Internal Revenue Code is modified to read "8 percent."

(b) For each taxable year beginning on or after January 1, 1997, the reference to "20 percent" in Section 41(a)(1) of the Internal Revenue Code is modified to read "11 percent."

(c) Section 41(a)(2) of the Internal Revenue Code, relating to basic research payments, shall not apply.

(d) "Qualified research" shall include only research conducted in California.

(e) In the case where the credit allowed under this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(f) Section 41(b)(3)(C) of the Internal Revenue Code, relating to amounts paid to certain research consortia, shall not apply.

(g) Section 41(c)(3)(B)(i)(I) of the Internal Revenue Code, relating to startup companies, shall not apply.

(h) Section 41(c)(4) of the Internal Revenue Code, relating to election of alternative incremental credit, shall not apply.

(i) Section 41(c)(6) of the Internal Revenue Code, relating to gross receipts, is modified to take into account only those gross receipts from the sale of property held primarily for sale to customers in the ordinary course of the taxpayer's trade or business that is delivered or shipped to a purchaser within this state, regardless of f.o.b. point or other conditions of sale.

(j) Section 41(h) of the Internal Revenue Code, relating to termination, shall not apply.

(k) Section 41(g) of the Internal Revenue Code, relating to special rule for passthrough of credit, is modified by each of the following:

(1) The last sentence shall not apply.

(2) If the amount determined under Section 41(a) of the Internal Revenue Code for any taxable year exceeds the limitation of Section 41(g) of the Internal Revenue Code, that amount may be carried over to other taxable years under the rules of subdivision (e); except that the limitation of Section 41(g) of the Internal Revenue Code shall be taken into account in each subsequent taxable year.

(*l*) The amendments made to this section by the act adding this subdivision shall apply only to taxable years beginning on or after January 1, 1997.

SEC. 5. Section 17054 of the Revenue and Taxation Code is amended to read:

17054. In the case of individuals, the following credits for personal exemption may be deducted from the tax imposed under Section 17041 or 17048, less any increases imposed under paragraph (1) of

subdivision (d) or paragraph (1) of subdivision (e), or both, of Section 17560.

(a) In the case of a single individual, a head of household, or a married individual making a separate return, a credit of fifty-one dollars ($51) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, and fifty-two dollars ($52) for taxable years beginning on or after January 1, 1988.

(b) In the case of a surviving spouse (as defined in Section 17046), or a husband and wife making a joint return, a credit of one hundred two dollars ($102) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, and one hundred four dollars ($104) for taxable years beginning on or after January 1, 1988. If one spouse was a resident for the entire taxable year and the other spouse was a nonresident for all or any portion of the taxable year, the personal exemption shall be divided equally.

(c) In addition to any other credit provided in this section, in the case of an individual who is 65 years of age or over by the end of the taxable year, a credit of fifty-one dollars ($51) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, and fifty-two dollars ($52) for taxable years beginning on or after January 1, 1988.

(d) (1) A credit of fifty-one dollars ($51) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, and fifty-two dollars ($52) for taxable years beginning on or after January 1, 1988, for each dependent (as defined in Section 17056) for whom an exemption is allowable under Section 151(c) of the Internal Revenue Code, relating to additional exemption for dependents.

(2) The credit allowed under paragraph (1) shall not be denied on the basis that the identification number of the dependent, as defined in Section 17056, for whom an exemption is allowable under Section 151(c) of the Internal Revenue Code, relating to additional exemption for dependents, is not included on the return claiming the credit.

(e) A credit for personal exemption of fifty-one dollars ($51) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, and fifty-two dollars ($52) for taxable years beginning on or after January 1, 1988, for the taxpayer if he or she is blind at the end of his or her taxable year.

(f) A credit for personal exemption of fifty-one dollars ($51) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, and fifty-two dollars ($52) for taxable years beginning on or after January 1, 1988, for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(g) For the purposes of this section, an individual is blind only if either: his or her central visual acuity does not exceed 20/200 in the

better eye with correcting lenses, or his or her visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(h) In the case of an individual with respect to whom a credit under this section is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the credit amount applicable to that individual for that individual's taxable year shall be zero.

(i) For each taxable year beginning on or after January 1, 1989, the Franchise Tax Board shall compute the credits prescribed in this section. That computation shall be made as follows:

(1) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index as modified for rental equivalent homeownership for all items from June of the prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.

(2) The Franchise Tax Board shall add 100 percent to the percentage change figure which is furnished to them pursuant to paragraph (1), and divide the result by 100.

(3) The Franchise Tax Board shall multiply the immediately preceding taxable year credits by the inflation adjustment factor determined in paragraph (2), and round off the resulting products to the nearest one dollar ($1).

(4) In computing the credits pursuant to this subdivision, the credit provided in subdivision (b) shall be twice the credit provided in subdivision (a).

(j) The amendments made to this section by the act adding this subdivision shall be applied only in the computation of taxes for taxable years beginning on or after January 1, 1990.

SEC. 6. Section 17062 of the Revenue and Taxation Code is amended to read:

17062. (a) In addition to the other taxes imposed by this part, there is hereby imposed for each taxable year, a tax equal to the excess, if any, of—

(1) The tentative minimum tax for the taxable year, over

(2) The regular tax for the taxable year.

(b) For purposes of this chapter, each of the following shall apply:

(1) The tentative minimum tax shall be computed in accordance with Sections 55 to 59, inclusive, of the Internal Revenue Code, except as otherwise provided in this part.

(2) The regular tax shall be the amount of tax imposed by Section 17041 or 17048, before reduction for any credits against the tax, less any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560.

(3) (A) The provisions of Section 55(b)(1) of the Internal Revenue Code shall be modified to provide that the tentative

minimum tax for the taxable year shall be equal to the following percent of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount, before reduction for any credits against the tax:

(i) For any taxable year beginning on or after January 1, 1991, and before January 1, 1996, 8.5 percent.

(ii) For any taxable year beginning on or after January 1, 1996, 7 percent.

(B) In the case of a nonresident or part-year resident, the tentative minimum tax shall be computed as if the nonresident or part-year resident were a resident for the entire year multiplied by the ratio of California adjusted gross income (as modified for purposes of this chapter) to total adjusted gross income from all sources (as modified for purposes of this chapter). For purposes of computing the tax under subparagraph (A) and gross income from all sources, the net operating loss deduction provided in Section 56(d) of the Internal Revenue Code shall be computed as if the taxpayer were a resident for all prior years.

(C) For purposes of this section, the term "California adjusted gross income" includes each of the following:

(i) For any period during which the taxpayer was a resident of this state (as defined by Section 17014), all items of adjusted gross income (as modified for purposes of this chapter), regardless of source.

(ii) For any period during which the taxpayer was not a resident of this state, only those items of adjusted gross income (as modified for purposes of this chapter) which were derived from sources within this state, determined in accordance with Chapter 11 (commencing with Section 17951).

(4) The provisions of Section 55(b)(2) of the Internal Revenue Code, relating to alternative minimum taxable income, shall be modified to provide that alternative minimum taxable income shall not include the income, adjustments, and items of tax preference attributable to any trade or business of a qualified taxpayer.

(A) For purposes of this paragraph, "qualified taxpayer" means a taxpayer who meets both of the following:

(i) Is the owner of, or has an ownership interest in, a trade or business.

(ii) Has aggregate gross receipts, less returns and allowances, of less than one million dollars ($1,000,000) during the taxable year from all trades or businesses of which the taxpayer is the owner or has an ownership interest, in the amount of that taxpayer's proportionate interest in each trade or business.

(B) (i) For purposes of this paragraph, "proportionate interest" includes an interest in a passthrough entity.

(ii) For purposes of this paragraph, "passthrough entity" means any of the following:

(I) A partnership, as defined by Section 17008.

(II) An S corporation, as provided in Chapter 4.5 (commencing with Section 23800) of Part 11.

(III) A regulated investment company, as provided in Section 24871.

(IV) A real estate investment trust, as provided in Section 24872.

(V) A real estate mortgage investment conduit, as provided in Section 24874.

(c) Section 56(b)(1)(E) of the Internal Revenue Code, relating to standard deduction and deduction for personal exemptions not allowed, is modified, for purposes of this part, to deny the standard deduction allowed by Section 17073.5.

(d) The provisions of Section 57(a)(5) of the Internal Revenue Code, relating to tax-exempt interest shall not apply.

(e) (1) Section 57(a) of the Internal Revenue Code, relating to items of tax preference, is modified to include as an item of tax preference the amount by which the deduction allowable under Section 170 of the Internal Revenue Code, relating to charitable contributions or gifts, or Section 642(c) of the Internal Revenue Code, relating to deduction for amounts paid or permanently set aside for a charitable purpose, would be reduced if all capital gain property were taken into account at its adjusted basis.

(2) For purposes of paragraph (1), the term "capital gain property" has the meaning given to that term by Section 170(b)(1)(C)(iv) of the Internal Revenue Code. That term shall not include any property to which an election under Section 170(b)(1)(C)(iii) of the Internal Revenue Code applies.

(f) Section 57(a) of the Internal Revenue Code, relating to items of tax preference, is modified to include as an item of tax preference an amount equal to one-half of the amount excluded from gross income for the taxable year under Section 18152.5.

(g) The provisions of Section 59(a) of the Internal Revenue Code, relating to the alternative minimum tax foreign tax credit, shall not apply.

SEC. 6.5. Section 17062 of the Revenue and Taxation Code is amended to read:

17062. (a) In addition to the other taxes imposed by this part, there is hereby imposed for each taxable year, a tax equal to the excess, if any, of—

(1) The tentative minimum tax for the taxable year, over

(2) The regular tax for the taxable year.

(b) For purposes of this chapter, each of the following shall apply:

(1) The tentative minimum tax shall be computed in accordance with Sections 55 to 59, inclusive, of the Internal Revenue Code, except as otherwise provided in this part.

(2) The regular tax shall be the amount of tax imposed by Section 17041 or 17048, before reduction for any credits against the tax, less any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560.

(3) (A) The provisions of Section 55(b)(1) of the Internal Revenue Code shall be modified to provide that the tentative minimum tax for the taxable year shall be equal to the following percent of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount, before reduction for any credits against the tax:

(i) For any taxable year beginning on or after January 1, 1991, and before January 1, 1996, 8.5 percent.

(ii) For any taxable year beginning on or after January 1, 1996, 7 percent.

(B) In the case of a nonresident or part-year resident, the tentative minimum tax shall be computed as if the nonresident or part-year resident were a resident for the entire year multiplied by the ratio of California adjusted gross income (as modified for purposes of this chapter) to total adjusted gross income from all sources (as modified for purposes of this chapter). For purposes of computing the tax under subparagraph (A) and gross income from all sources, the net operating loss deduction provided in Section 56(d) of the Internal Revenue Code shall be computed as if the taxpayer were a resident for all prior years.

(C) For purposes of this section, the term "California adjusted gross income" includes each of the following:

(i) For any period during which the taxpayer was a resident of this state (as defined by Section 17014), all items of adjusted gross income (as modified for purposes of this chapter), regardless of source.

(ii) For any period during which the taxpayer was not a resident of this state, only those items of adjusted gross income (as modified for purposes of this chapter) which were derived from sources within this state, determined in accordance with Chapter 11 (commencing with Section 17951).

(4) The provisions of Section 55(b)(2) of the Internal Revenue Code, relating to alternative minimum taxable income, shall be modified to provide that alternative minimum taxable income shall not include the income, adjustments, and items of tax preference attributable to any trade or business of a qualified taxpayer.

(A) For purposes of this paragraph, "qualified taxpayer" means a taxpayer who meets both of the following:

(i) Is the owner of, or has an ownership interest in, a trade or business.

(ii) Has aggregate gross receipts, less returns and allowances, of less than one million dollars ($1,000,000) during the taxable year from all trades or businesses of which the taxpayer is the owner or has an ownership interest, in the amount of that taxpayer's proportionate interest in each trade or business.

(B) For purposes of this paragraph, "aggregate gross receipts, less returns and allowances" means the sum of the gross receipts of the trades or businesses which the taxpayer owns and the proportionate interest of the gross receipts of the trades or businesses which the

taxpayer owns and of passthrough entities in which the taxpayer holds an interest.

(C) For purposes of this paragraph, "gross receipts, less returns and allowances" means the sum of the gross receipts from the production of business income, as defined in subdivision (a) of Section 25120, and the gross receipts from the production of nonbusiness income, as defined in subdivision (d) of Section 25120.

(D) For purposes of this paragraph, "proportionate interest" means:

(i) In the case of a passthrough entity which reports a profit for the taxable or income year, the taxpayer's profit interest in the entity at the end of the taxpayer's taxable year.

(ii) In the case of a passthrough entity which reports a loss for the taxable or income year, the taxpayer's loss interest in the entity at the end of the taxpayer's taxable year.

(iii) In the case of a passthrough entity which is sold or liquidates during the taxable or income year, the taxpayer's capital account interest in the entity at the time of the sale or liquidation.

(E) (i) For purposes of this paragraph, "proportionate interest" includes an interest in a passthrough entity.

(ii) For purposes of this paragraph, "passthrough entity" means any of the following:

(I) A partnership, as defined by Section 17008.

(II) An S corporation, as provided in Chapter 4.5 (commencing with Section 23800) of Part 11.

(III) A regulated investment company, as provided in Section 24871.

(IV) A real estate investment trust, as provided in Section 24872.

(V) A real estate mortgage investment conduit, as provided in Section 24874.

(c) (1) Section 56(b)(1)(E) of the Internal Revenue Code, relating to standard deduction and deduction for personal exemptions not allowed, is modified, for purposes of this part, to deny the standard deduction allowed by Section 17073.5.

(2) Section 56(b)(3) of the Internal Revenue Code, relating to treatment of incentive stock options, shall be modified to additionally provide the following:

(A) Section 421 of the Internal Revenue Code shall not apply to the transfer of stock acquired pursuant to the exercise of a California qualified stock option under Section 17502.

(B) Section 422(c)(2) of the Internal Revenue Code shall apply in any case where the disposition and inclusion of a California qualified stock option for purposes of this chapter are within the same taxable year and that section shall not apply in any other case.

(C) The adjusted basis of any stock acquired by the exercise of a California qualified stock option shall be determined on the basis of the treatment prescribed by this paragraph.

(d) The provisions of Section 57(a)(5) of the Internal Revenue Code, relating to tax-exempt interest shall not apply.

(e) (1) Section 57(a) of the Internal Revenue Code, relating to items of tax preference, is modified to include as an item of tax preference the amount by which the deduction allowable under Section 170 of the Internal Revenue Code, relating to charitable contributions or gifts, or Section 642(c) of the Internal Revenue Code, relating to deduction for amounts paid or permanently set aside for a charitable purpose, would be reduced if all capital gain property were taken into account at its adjusted basis.

(2) For purposes of paragraph (1), the term "capital gain property" has the meaning given to that term by Section 170(b)(1)(C)(iv) of the Internal Revenue Code. That term shall not include any property to which an election under Section 170(b)(1)(C)(iii) of the Internal Revenue Code applies.

(f) Section 57(a) of the Internal Revenue Code, relating to items of tax preference, is modified to include as an item of tax preference an amount equal to one-half of the amount excluded from gross income for the taxable year under Section 18152.5.

(g) The provisions of Section 59(a) of the Internal Revenue Code, relating to the alternative minimum tax foreign tax credit, shall not apply.

SEC. 7. Section 17063 of the Revenue and Taxation Code is amended to read:

17063. (a) There shall be allowed as a credit against the net tax (as defined by Section 17039) for any taxable year an amount equal to the minimum tax credit for that taxable year.

(b) For purposes of subdivision (a), the minimum tax credit shall be determined in accordance with Section 53 of the Internal Revenue Code, except as otherwise provided in this part.

(c) For purposes of this chapter, the amount determined under Section 53(c)(1) of the Internal Revenue Code shall be the regular tax as defined by paragraph (2) of subdivision (b) of Section 17062, reduced by the sum of the credits allowable under this part, other than:

(1) The credits described in paragraph (6) of subdivision (a) of Section 17039.

(2) That portion of any credit which reduces the tax below the tentative minimum tax as provided in paragraph (1) of subdivision (c) of Section 17039.

(d) Section 53(d)(1)(B)(ii)(II) of the Internal Revenue Code, relating to credit not allowed for exclusion preferences, is modified to include subdivision (f) of Section 17062, as a specified item.

(e) Section 53(d)(1)(B)(ii)(II) of the Internal Revenue Code, relating to credit not allowed for exclusion preferences, is modified to include subdivision (e) of Section 17062, as a specified item.

SEC. 8. Section 17072 of the Revenue and Taxation Code is amended to read:

17072. (a) Section 62 of the Internal Revenue Code, relating to adjusted gross income defined, shall apply, except as otherwise provided.

(b) The amendments to Section 62 of the Internal Revenue Code, made by Section 13213 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to modifications to deduction for moving expenses, shall apply to taxable years beginning on or after January 1, 1996.

SEC. 9. Section 17077 of the Revenue and Taxation Code is amended to read:

17077. The provisions of Section 68 of the Internal Revenue Code, relating to overall limitation on itemized deductions, shall apply with the following modifications:

(a) "Six percent" shall be substituted for "3 percent" in Section 68(a)(1) of the Internal Revenue Code.

(b) For purposes of this section, "applicable amount" means one hundred thousand dollars ($100,000) in the case of a single individual or a married individual making a separate return, one hundred fifty thousand dollars ($150,000) in the case of a head of household, and two hundred thousand dollars ($200,000) in the case of a surviving spouse or a husband and wife making a joint return.

(c) Section 68(b)(2) of the Internal Revenue Code, relating to inflation adjustments, shall not apply. However, for any taxable year beginning on or after January 1, 1992, the applicable amounts specified in subdivision (b) shall be recomputed annually in the same manner as the recomputation of income tax brackets under subdivision (h) of Section 17041.

SEC. 10. Section 17085 of the Revenue and Taxation Code is amended to read:

17085. The provisions of Section 72 of the Internal Revenue Code, relating to annuities and certain proceeds of life insurance contracts, shall be modified as follows:

(a) The amendments and transitional rules made by Public Law 99-514 shall be applicable to this part for the same transactions and the same years as they are applicable for federal purposes, except that the repeal of Section 72(d) of the Internal Revenue Code, relating to repeal of special rule for employees' annuities, shall apply only to the following:

(1) Any individual whose annuity starting date is after December 31, 1986.

(2) At the election of the taxpayer, any individual whose annuity starting date is after July 1, 1986, and before January 1, 1987.

(b) The amount of a distribution from an individual retirement account or annuity or employees' trust or employee annuity that is includable in gross income for federal purposes shall be reduced for purposes of this part by the lesser of either of the following:

(1) An amount equal to the amount includable in federal gross income for the taxable year.

(2) An amount equal to the basis in the account or annuity allowed by Section 17507 (relating to individual retirement accounts and simplified employee pensions) or the increased basis allowed by Sections 17504 and 17506 (relating to plans of self-employed individuals) remaining after adjustment for reductions in gross income under this provision in prior taxable years.

(c) (1) Except as provided in paragraph (2), the amount of the penalty imposed under this part shall be computed in accordance with Sections 72(m), (q), (t), and (v) of the Internal Revenue Code using a rate of $2^1/_2$ percent, in lieu of the rate provided in those sections.

(2) In the case where Section 72(t)(6) of the Internal Revenue Code, relating to special rules for simple retirement accounts, applies, the rate in paragraph (1) shall be 6 percent in lieu of the $2^1/_2$ percent rate specified therein.

(d) The provisions of Section 72(f)(2) of the Internal Revenue Code, relating to special rules for computing employees' contributions, shall be applicable without applying the exceptions which immediately follow that paragraph.

SEC. 11. Section 17088 of the Revenue and Taxation Code is amended to read:

17088. (a) Subchapter M of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to regulated investment companies, real estate investment trusts, real estate mortgage investment conduits, and financial asset securitization investment trusts, shall apply, except as otherwise provided.

(b) Section 17145, relating to exempt interest dividends, shall apply in lieu of Section 852(b)(5) of the Internal Revenue Code.

(c) Section 852(b)(3)(D) of the Internal Revenue Code, relating to treatment by shareholders of undistributed capital gains, shall not apply.

SEC. 12. Section 17088.3 is added to the Revenue and Taxation Code, to read:

17088.3. (a) Section 7518 of the Internal Revenue Code, relating to tax incentives relating to merchant marine capital construction funds, shall apply, except as otherwise provided.

(b) Section 7518(d)(2)(C) of the Internal Revenue Code is modified as follows:

(1) By substituting "70 percent" in lieu of the reference to "the percentage applicable under Section 243(a)(1)."

(2) To refer to Section 24402 in lieu of Section 243 of the Internal Revenue Code.

(c) Section 7518(d)(2)(D) of the Internal Revenue Code is modified to refer to "interest income exempt from taxation under this part" in lieu of "interest income exempt from taxation under Section 103."

(d) Section 7518(g)(3) of the Internal Revenue Code is modified as follows:

(1) To refer to Article 6 (commencing with Section 19101) of Chapter 4 of Part 10.2 in lieu of Section 6601 of the Internal Revenue Code.

(2) To refer to Article 7 (commencing with Section 19131) of Chapter 4 of Part 10.2 in lieu of Section 6651 of the Internal Revenue Code.

(e) Section 7518(g)(6) of the Internal Revenue Code is modified as follows:

(1) By substituting a reference to "this part" in lieu of "Chapter 1" in each place in which it appears.

(2) To refer to Section 17041 in lieu of Section 1 of the Internal Revenue Code.

(3) The last sentence in Section 7518(g)(6)(A) of the Internal Revenue Code shall not apply.

SEC. 13. Section 17131.5 of the Revenue and Taxation Code is repealed.

SEC. 14. Section 17132 of the Revenue and Taxation Code is repealed.

SEC. 14.5. Section 17132.5 is added to the Revenue and Taxation Code to read:

17132.5. Section 101 of the Internal Revenue Code is modified to provide that the repeal of former Section 101(b) of the Internal Revenue Code, relating to employee's death benefits, shall apply only with respect to amounts received on or after January 1, 1997, with respect to decedents dying on or after August 21, 1996.

SEC. 15. Section 17137 of the Revenue and Taxation Code is repealed.

SEC. 16. Section 17138.5 of the Revenue and Taxation Code is repealed.

SEC. 17. Section 17139 of the Revenue and Taxation Code is amended to read:

17139. Section 136 of the Internal Revenue Code, relating to energy conservation subsidies provided by public utilities, shall apply to amounts received on or after January 1, 1997.

SEC. 18. Section 17141.5 of the Revenue and Taxation Code is repealed.

SEC. 19. Section 17150 of the Revenue and Taxation Code is repealed.

SEC. 20. Section 17154 is added to the Revenue and Taxation Code, to read:

17154. Section 132(j)(8) of the Internal Revenue Code, relating to application of section to otherwise taxable educational or training benefits, is modified by substituting "which are not excludable under Section 17151" in lieu of "which are not excludable under Section 127".

SEC. 21. Section 17201.5 of the Revenue and Taxation Code is repealed.

SEC. 22. Section 17210 of the Revenue and Taxation Code is repealed.

SEC. 23. Section 17213 of the Revenue and Taxation Code is repealed.

SEC. 24. Section 17215 is added to the Revenue and Taxation Code, to read:

17215. (a) Section 220(a) of the Internal Revenue Code, relating to deduction allowed, is modified to provide that the amount allowed as a deduction shall be an amount equal to the amount allowed to that individual as a deduction under Section 220 of the Internal Revenue Code, relating to medical savings accounts, on the federal income tax return filed for the same taxable year by that individual.

(b) Section 220(f)(4) of the Internal Revenue Code, relating to additional tax on distributions not used for qualified medical expenses, is modified by substituting "10 percent" in lieu of "15 percent."

SEC. 25. Section 17249 of the Revenue and Taxation Code is repealed.

SEC. 26. Section 17250 of the Revenue and Taxation Code is amended to read:

17250. (a) (1) Section 168 of the Internal Revenue Code, relating to the accelerated cost recovery system, shall apply to assets placed in service on or after January 1, 1987, in taxable years beginning on or after January 1, 1987.

(2) In the case of assets placed in service on or after January 1, 1987, in taxable years beginning prior to January 1, 1987, a taxpayer may elect to have Sections 168 and 179 of the Internal Revenue Code apply by doing all of the following:

(A) Making an election on the return for the first taxable year beginning on or after January 1, 1987.

(B) Establishing a depreciation adjustment account for each asset (or group of assets) in an amount equal to the difference between the depreciation allowed on the federal return for each asset (or group of assets) and the depreciation allowed under this part.

(C) The depreciation adjustment account (or accounts) established under subparagraph (B) shall be amortized over 60 months beginning with the first taxable year beginning on or after January 1, 1987.

(3) In the case of assets placed in service prior to January 1, 1987, in taxable years beginning prior to January 1, 1987, Section 168 of the Internal Revenue Code shall apply only to residential rental property as provided by former Section 17250.5 (as amended by Chapter 1461 of the Statutes of 1985).

(b) For purposes of subdivision (a), any reference to "tax imposed by this chapter" in Section 168 of the Internal Revenue Code means "net tax," as defined in Section 17039.

(c) For purposes of paragraph (1) of subdivision (a), Section 168 of the Internal Revenue Code shall be modified as follows:

(1) Section 168(e)(3) shall be modified to provide that any grapevine, replaced in a vineyard in California in any taxable year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, shall be "five-year property," rather than "10-year property."

(2) Section 168(g)(3) of the Internal Revenue Code shall be modified to provide that any grapevine, replaced in a vineyard in California in any taxable year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, shall have a class life of 10 years.

(d) Every taxpayer claiming a depreciation deduction with respect to grapevines as described in subdivision (c) shall obtain a written certification from an independent state-certified integrated pest management advisor, or a state agricultural commissioner or advisor, that specifies that the replanting was necessary to restore a vineyard infested with phylloxera. The taxpayer shall retain the certification for future audit purposes.

(e) (1) Section 169 of the Internal Revenue Code, relating to amortization of pollution control facilities, shall apply, except as otherwise provided.

(2) The deduction allowed by this section shall be available only with respect to facilities located in this state.

(3) The "state certifying authority," as defined in Section 169(d)(2) of the Internal Revenue Code, means the State Air Resources Board, in the case of air pollution, and the State Water Resources Control Board, in the case of water pollution.

(f) For property used in a trade or business, or held for production of income, there shall be allowed as a depreciation deduction a reasonable allowance for the cost of a solar energy system and allowable conservation measures over a 60-month period for taxable years beginning before January 1, 1987.

(g) Section 7622(c)[e] of Public Law 101-239, relating to the effective date of changes in treatment of transfers of franchises, trademarks, and trade names, shall apply.

(h) Section 7645(b) of Public Law 101-239, relating to the effective date of disallowance of depreciation for certain term interests, shall apply.

(i) The amendments to Section 168(c)(1) of the Internal Revenue Code made by Section 13151 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to increase in recovery period for nonresidential real property, shall apply to property placed in service on or after January 1, 1997, in taxable years beginning on or after January 1, 1997.

(j) Section 168(j) of the Internal Revenue Code, relating to property on Indian reservations, shall not apply.

SEC. 26.5. Section 17250 of the Revenue and Taxation Code is amended to read:

17250. (a) (1) Section 168 of the Internal Revenue Code, relating to the accelerated cost recovery system, shall apply to assets placed in service on or after January 1, 1987, in taxable years beginning on or after January 1, 1987.

(2) In the case of assets placed in service on or after January 1, 1987, in taxable years beginning prior to January 1, 1987, a taxpayer may elect to have Sections 168 and 179 of the Internal Revenue Code apply by doing all of the following:

(A) Making an election on the return for the first taxable year beginning on or after January 1, 1987.

(B) Establishing a depreciation adjustment account for each asset (or group of assets) in an amount equal to the difference between the depreciation allowed on the federal return for each asset (or group of assets) and the depreciation allowed under this part.

(C) The depreciation adjustment account (or accounts) established under subparagraph (B) shall be amortized over 60 months beginning with the first taxable year beginning on or after January 1, 1987.

(3) In the case of assets placed in service prior to January 1, 1987, in taxable years beginning prior to January 1, 1987, Section 168 of the Internal Revenue Code shall apply only to residential rental property as provided by former Section 17250.5 (as amended by Chapter 1461 of the Statutes of 1985).

(b) For purposes of subdivision (a), any reference to "tax imposed by this chapter" in Section 168 of the Internal Revenue Code means "net tax," as defined in Section 17039.

(c) For purposes of paragraph (1) of subdivision (a), Section 168 of the Internal Revenue Code shall be modified as follows:

(1) Section 168(e)(3) shall be modified to provide that any grapevine, replaced in a vineyard in California in any taxable year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, or replaced in a vineyard in California in any taxable year beginning on or after January 1, 1997, as a direct result of Pierce's Disease in that vineyard, shall be "five-year property," rather than "10-year property."

(2) Section 168(g)(3) of the Internal Revenue Code shall be modified to provide that any grapevine, replaced in a vineyard in California in any taxable year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, or replaced in a vineyard in California in any taxable year beginning on or after January 1, 1997, as a direct result of Pierce's Disease in that vineyard, shall have a class life of 10 years.

(d) Every taxpayer claiming a depreciation deduction with respect to grapevines as described in subdivision (c) shall obtain a written certification from an independent state-certified integrated pest management adviser, or a state agricultural commissioner or adviser, that specifies that the replanting was necessary to restore a

vineyard infested with phylloxera or Pierce's Disease. The taxpayer shall retain the certification for future audit purposes.

(e) (1) Section 169 of the Internal Revenue Code, relating to amortization of pollution control facilities, shall apply, except as otherwise provided.

(2) The deduction allowed by this section shall be available only with respect to facilities located in this state.

(3) The "state certifying authority," as defined in Section 169(d)(2) of the Internal Revenue Code, means the State Air Resources Board, in the case of air pollution, and the State Water Resources Control Board, in the case of water pollution.

(f) For property used in a trade or business, or held for production of income, there shall be allowed as a depreciation deduction a reasonable allowance for the cost of a solar energy system and allowable conservation measures over a 60-month period for taxable years beginning before January 1, 1987.

(g) Section 7622(c)[e] of Public Law 101-239, relating to the effective date of changes in treatment of transfers of franchises, trademarks, and trade names, shall apply.

(h) Section 7645(b) of Public Law 101-239, relating to the effective date of disallowance of depreciation for certain term interests, shall apply.

(i) The amendments to Section 168(c)(1) of the Internal Revenue Code made by Section 13151 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to increase in recovery period for nonresidential real property, shall apply to property placed in service on or after January 1, 1997, in taxable years beginning on or after January 1, 1997.

(j) Section 168(j) of the Internal Revenue Code, relating to property on Indian reservations, shall not apply.

SEC. 27. Section 17250.5 is added to the Revenue and Taxation Code, to read:

17250.5. Section 167(g) of the Internal Revenue Code, relating to depreciation under income forecast method, shall be modified as follows:

(a) Section 167(g)(2)(C) of the Internal Revenue Code is modified by substituting "Section 19521" in lieu of "Section 460(b)(7)" of the Internal Revenue Code.

(b) Section 167(g)(5)(D) of the Internal Revenue Code is modified by substituting "Part 10.2 (commencing with Section 18401) (other than Section 19136)" in lieu of "Subtitle F (other than Sections 6654 and 6655)".

SEC. 28. Section 17251.5 is added to the Revenue and Taxation Code, to read:

17251.5. Section 170(e)(5) of the Internal Revenue Code, relating to special rule for contributions of stock for which market quotations are readily available, shall not apply.

SEC. 29. Section 17255 of the Revenue and Taxation Code is repealed.

SEC. 29.5. Section 17255 is added to the Revenue and Taxation Code to read:

17255. (a) Section 179(b)(1) of the Internal Revenue Code, relating to dollar limitation, is modified to provide that, if the taxable year begins in 1997, the applicable amount is thirteen thousand dollars ($13,000) in lieu of eighteen thousand dollars ($18,000), and if the taxable year begins in 1998, the applicable amount is sixteen thousand dollars ($16,000) in lieu of eighteen thousand five hundred dollars ($18,500).

(b) Section 179 of the Internal Revenue Code is modified to provide that the "aggregate amount disallowed" referred to in Section 179(b)(3)(B) of the Internal Revenue Code shall be computed under this part as it read on the date the property generating the amount disallowed was placed in service.

SEC. 30. Section 17267 of the Revenue and Taxation Code is repealed.

SEC. 31. Section 17270.5 is added to the Revenue and Taxation Code, to read:

17270.5. (a) (1) The deduction allowed by Section 162(a) of the Internal Revenue Code, relating to trade or business expenses, shall include all the ordinary and necessary expenses, including, but not limited to, traveling expenses described in Section 162(a)(2) of the Internal Revenue Code and the cost of preparing testimony, paid or incurred during the taxable year in carrying on any trade or business for any of the following:

(A) In direct connection with appearances before, submission of statements to, or sending communications to, the committees, or individual members, of Congress or of any legislative body of a state, a possession of the United States, or a political subdivision of any of the foregoing with respect to legislation or proposed legislation of direct interest to the taxpayer.

(B) In direct connection with communication of information between the taxpayer and an organization of which the taxpayer is a member with respect to legislation or proposed legislation of direct interest to the taxpayer and to that organization.

(C) That portion of the dues so paid or incurred with respect to any organization of which the taxpayer is a member which is attributable to the expenses of the activities described in subparagraphs (A) and (B) carried on by that organization.

(2) Paragraph (1) shall not be construed as allowing the deduction of any amount paid or incurred, whether by way of contribution, gift, or otherwise, with respect to either of the following:

(A) For participation in, or intervention in, any political campaign on behalf of any candidate for public office.

(B) In connection with any attempt to influence the general public, or segments thereof, with respect to legislative matters, elections, or referendums.

(b) Section 162(e) of the Internal Revenue Code, relating to the denial of deduction for certain lobbying and political expenditures shall not apply.

SEC. 32. Section 17271 of the Revenue and Taxation Code is repealed.

SEC. 33. Section 17271 is added to the Revenue and Taxation Code, to read:

17271. Section 274(a)(3) of the Internal Revenue Code, relating to denial of deduction for club dues, shall not apply.

SEC. 34. Section 17273 of the Revenue and Taxation Code is amended to read:

17273. Section 162(*l*)(2) of the Internal Revenue Code, relating to applicable percentage, is modified by substituting "25 percent" for the percentages specified in that section.

SEC. 35. Section 17275.5 is added to the Revenue and Taxation Code, to read:

17275.5. (a) No deduction shall be denied under Section 170(f)(8) of the Internal Revenue Code, relating to substantiation requirement for certain contributions, upon a showing that the requirements in Section 170(f)(8) of the Internal Revenue Code have been met with respect to that contribution for federal purposes.

(b) Section 170(f)(9) of the Internal Revenue Code, relating to denial of deduction where contribution for lobbying activities, shall not apply.

SEC. 36. Section 17278.5 is added to the Revenue and Taxation Code, to read:

17278.5. The deduction allowed by Section 194 of the Internal Revenue Code, relating to amortization of reforestation expenditures, shall be available only with respect to qualified timber property located in this state.

SEC. 37. Section 17279 of the Revenue and Taxation Code is amended to read:

17279. Section 197 of the Internal Revenue Code, relating to amortization of goodwill and certain other intangibles, is modified as follows:

(a) (1) Section 13261(g) of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to effective dates, shall apply, except as otherwise provided.

(2) (A) If a taxpayer has, at any time, made an election for federal purposes under Section 13261(g)(2) of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to election to have amendments apply to property acquired after July 25, 1991, or Section 13261(g)(3) of that act, relating to elective binding contract exception, a separate election for state purposes shall not be allowed under paragraph (3)

of subdivision (e) of Section 17024.5 and the federal election shall be binding for purposes of this part.

(B) If a taxpayer has not made an election for federal purposes under Section 13261(g)(2) of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to election to have amendments apply to property acquired after July 25, 1991, or Section 13261(g)(3) of that act, relating to elective binding contract exception, with respect to property acquired before August 11, 1993, then the taxpayer shall not be allowed to make an election under Section 13261(g) of the Revenue Reconciliation Act of 1993 (P.L. 103-66), for purposes of this part, with respect to that property.

(b) Notwithstanding any other provision of this section, each of the following shall apply:

(1) No deduction shall be allowed under this section for any taxable year beginning prior to January 1, 1994.

(2) No inference is intended with respect to the allowance or denial of any deduction for amortization in any taxable year beginning before January 1, 1994.

(3) In the case of an intangible that was acquired in a taxable year beginning before January 1, 1994, the amount to be amortized shall not exceed the adjusted basis of that intangible as of the first day of the first taxable year beginning on or after January 1, 1994, and that amount shall be amortized ratably over the period beginning with the first month of the first taxable year beginning on or after January 1, 1994, and ending 15 years after the month in which the intangible was acquired.

SEC. 38. Section 17283 of the Revenue and Taxation Code is repealed.

SEC. 39. Section 17507 of the Revenue and Taxation Code is amended to read:

17507. The provisions of Section 408 of the Internal Revenue Code, relating to individual retirement accounts, shall be modified as follows:

(a) The following provisions shall be incorporated into Section 408(e) of the Internal Revenue Code:

(1) In the case of a plan in existence in taxable year 1975 where contributions were made pursuant to, and in conformance with, Section 408 or 409 of the Internal Revenue Code of 1954, as amended by the Employee Retirement Income Security Act of 1974 (Public Law 93-406), any net income attributable to the 1975 contribution shall not be includable in the gross income, for taxable year 1977 or succeeding taxable years, of the individual for whose benefit the plan was established until distributed pursuant to the provisions of the plan or by operation of law.

(2) In the case of a simplified employee pension, where contributions are also made pursuant to, and in conformance with, the provisions of Section 408(k) of the Internal Revenue Code of 1954, the net income attributable to the nondeductible portion of

those contributions shall not be includable in the gross income of the individual for whose benefit the plan was established for the taxable year or for succeeding taxable years until distributed pursuant to the provisions of the plan or by operation of law.

(3) Notwithstanding the limitations provided in former Section 17272 (as amended by Chapter 1461 of the Statutes of 1985) with respect to the amount of deductible contributions and individuals eligible for the deduction, any income attributable to contributions made to a plan in existence in taxable years beginning on or after January 1, 1982, in conformance with Sections 219, 220, 408, and 409 of the Internal Revenue Code of 1954, shall not be includable in the gross income of the individual for whose benefit the plan was established until distributed pursuant to the provisions of the plan or by operation of law.

(b) The provisions of Section 408(d) of the Internal Revenue Code, relating to the tax treatment of distributions, are modified as follows:

(1) For taxable years beginning on or after January 1, 1982, and before January 1, 1987, the basis of any person in the account or annuity is the amount of contributions not allowed as a deduction under former subdivision (a), (e), or (g) of Section 17272 (as amended by Chapter 1461 of the Statutes of 1985) on account of the purchase of the account or annuity.

(2) For purposes of paragraph (1), the rules for recovery of basis shall be governed by Section 17085.

(c) A copy of the report, which is required to be filed with the Secretary of the Treasury under Section 408(i) or 408(*l*) of the Internal Revenue Code, shall be filed with the Franchise Tax Board at the same time and in the same manner as specified in those sections.

SEC. 40. Section 17561 of the Revenue and Taxation Code is amended to read:

17561. (a) Section 469(c)(7) of the Internal Revenue Code, relating to special rules for taxpayers in real property business, shall not apply.

(b) Section 469(d)(2) of the Internal Revenue Code, relating to passive activity credits, is modified to refer to the following credits:

(1) The credit for research expenses allowed by Section 17052.12.

(2) The credit for certain wages paid (targeted jobs) allowed by Section 17053.7.

(3) The credit for clinical testing expenses allowed by Section 17057.

(4) The credit for low-income housing allowed by Section 17058.

(c) Section 469(g)(1)(A) of the Internal Revenue Code is modified to provide that if all gain or loss realized on the disposition of the taxpayer's entire interest in any passive activity (or former passive activity) is recognized, the excess of—

(1) The sum of—

(A) Any loss from that activity for that taxable year (determined after application of Section 469(b) of the Internal Revenue Code), plus

(B) Any loss realized on that disposition, over

(2) Net income or gain for the taxable year from all passive activities (determined without regard to losses described in paragraph (1)),

shall be treated as a loss which is not from a passive activity.

(d) For purposes of applying the provisions of Section 469(i) of the Internal Revenue Code, relating to the twenty-five thousand dollars ($25,000) offset for rental real estate activities, the dollar limitation for the credit allowed under Section 17058 (relating to low-income housing) shall be equal to seventy-five thousand dollars ($75,000) in lieu of the amount specified in Section 469(i)(2) of the Internal Revenue Code.

(e) Section 502 of the Tax Reform Act of 1986 (Public Law 99-514) shall apply.

(f) For taxable years beginning on or after January 1, 1987, the provisions of Section 10212 of Public Law 100-203, relating to treatment of publicly traded partnerships under Section 469 of the Internal Revenue Code, shall be applicable.

SEC. 41. Section 17731.5 is added to the Revenue and Taxation Code, to read:

17731.5. (a) Section 641(d)(2)(A) of the Internal Revenue Code is modified to read: "The amount of the tax imposed by subdivision (e) of Section 17041 shall be determined by using the highest rate of tax applicable to an individual under subdivision (a) of Section 17041."

(b) Section 641(d)(2)(B) of the Internal Revenue Code is modified to read: "The credit allowed under subdivision (b) of Section 17733 shall be zero."

SEC. 42. Section 17748 of the Revenue and Taxation Code is repealed.

SEC. 43. Section 17750 of the Revenue and Taxation Code is amended to read:

17750. Section 643(a) of the Internal Revenue Code, relating to distributable net income, is modified to provide that the exclusion under Section 18152.5 shall not be taken into account.

SEC. 44. Section 17860 of the Revenue and Taxation Code is amended to read:

17860. (a) The amendments to Sections 731 and 737 of the Internal Revenue Code made by Section 741 of the Uruguay Round Agreements Act (P.L. 103-465), relating to partnership distributions of marketable securities, shall apply to distributions made on or after January 1, 1997.

(b) The amendments to Sections 736 and 751 of the Internal Revenue Code made by Section 13262 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to treatment of certain payments

to retired or deceased partners, shall apply to taxable years beginning on or after January 1, 1996, for payments to partners who died or retired after January 4, 1993.

SEC. 45. Section 18035 of the Revenue and Taxation Code is repealed.

SEC. 46. Section 18037 of the Revenue and Taxation Code is amended to read:

18037. (a) The provisions of Section 1033(g)(3)(A) of the Internal Revenue Code, relating to the election to treat outdoor advertising displays as real property, shall not be denied because the taxpayer has, on his or her federal return, elected to expense the asset.

(b) Section 13431(b) of the Revenue Reconciliation Act of 1993, relating to effective dates, shall apply.

SEC. 46.5. Section 18040 of the Revenue and Taxation Code is repealed.

SEC. 47. Section 18044 is added to the Revenue and Taxation Code, to read:

18044. The provisions of Section 1044 of the Internal Revenue Code, relating to rollover of publicly traded securities gain into specialized small business investment companies, shall not apply to any taxable year (or portion thereof) that those provisions (or similar provisions) are not applicable for federal income tax purposes.

SEC. 48. Section 18060 of the Revenue and Taxation Code is repealed.

SEC. 49. Section 18152 is added to the Revenue and Taxation Code, to read:

18152. (a) Section 1202 of the Internal Revenue Code, relating to 50-percent exclusion for gain from certain small business stock, shall not apply.

(b) Any reference in the Internal Revenue Code to the "exclusion allowed under Section 1202" shall, for purposes of this part, be modified to refer to the exclusion allowed under Section 18152.5.

SEC. 50. Section 18166 of the Revenue and Taxation Code is repealed.

SEC. 51. Section 18173 of the Revenue and Taxation Code is repealed.

SEC. 52. Section 18180 of the Revenue and Taxation Code is amended to read:

18180. Section 7872 of the Internal Revenue Code, relating to the treatment of loans with below market interest rates, shall apply, except as otherwise provided.

SEC. 53. Section 18601 of the Revenue and Taxation Code is amended to read:

18601. (a) Except as provided in subdivision (b) or (c), every taxpayer subject to the tax imposed by Part 11 (commencing with Section 23001) shall, within two months and 15 days after the close of its income year, transmit to the Franchise Tax Board a return in

a form prescribed by it, specifying for the income year, all the facts as it may by rule, or otherwise, require in order to carry out this part. A tax return, disclosing net income for any income year, filed pursuant to Chapter 2 (commencing with Section 23101) or Chapter 3 (commencing with Section 23501) of Part 11 shall be deemed filed pursuant to the proper chapter of Part 11 for the same income period, if the chapter under which the return is filed is determined erroneous.

(b) In the case of cooperative associations described in Section 24404, returns shall be filed on or before the 15th day of the ninth month following the close of its income year.

(c) In the case of taxpayers required to file a return for a short period under Section 24634, the due date for the short period return shall be the same as the due date of the federal tax return that includes the net income of the taxpayer for that short period, or the due date specified in subdivision (a) if no federal return is required to be filed that would include the net income for that short period.

(d) For income years beginning on or after January 1, 1997, each "S corporation" required to file a return under subdivision (a) for any income year shall, on or before the day on which the return for the income year was filed, furnish each person who is a shareholder at any time during the income year a copy of the information shown on the return.

(e) For taxable or income years beginning on or after January 1, 1997:

(1) A shareholder of an "S corporation" shall, on the shareholder's return, treat a Subchapter S item in a manner that is consistent with the treatment of the item on the corporate return.

(2) (A) In the case of any Subchapter S item, paragraph (1) shall not apply to that item if both of the following occur:

(i) Either of the following occurs:

(I) The corporation has filed a return, but the shareholder's treatment of the item on the shareholder's return is, or may be, inconsistent with the treatment of the item on the corporate return.

(II) The corporation has not filed a return.

(ii) The shareholder files with the Franchise Tax Board a statement identifying the inconsistency.

(B) A shareholder shall be treated as having complied with clause (ii) of subparagraph (A) with respect to a Subchapter S item if the shareholder does both of the following:

(i) Demonstrates to the satisfaction of the Franchise Tax Board that the treatment of the Subchapter S item on the shareholder's return is consistent with the treatment of the item on the schedule furnished to the shareholder by the corporation.

(ii) Elects to have this paragraph apply with respect to that item.

(3) In any case described in subclause (I) of clause (i) of subparagraph (A) of paragraph (2), and in which the shareholder does not comply with clause (ii) of subparagraph (A) of paragraph

(2), any adjustment required to make the treatment of the items by the shareholder consistent with the treatment of the items on the corporate return shall be treated as arising out of a mathematical error and assessed and collected under Section 19051.

(4) For purposes of this subdivision, "Subchapter S item" means any item of an "S corporation" to the extent provided by regulations that, for purposes of Part 10 (commencing with Section 17001) or this part, the item is more appropriately determined at the corporation level than at the shareholder level.

(5) The penalties imposed under Article 7 (commencing with Section 19131) of Chapter 4 shall apply in the case of a shareholder's negligence in connection with, or disregard of, the requirements of this section.

SEC. 54. Section 18624 of the Revenue and Taxation Code is amended to read:

18624. (a) Section 6109 of the Internal Revenue Code, relating to identifying numbers, shall apply, except as otherwise provided.

(b) Identifying numbers shall be required on state tax returns, statements, or other documents in the form and manner as the Franchise Tax Board may require.

(c) Section 6109(h) of the Internal Revenue Code, relating to identifying information required with respect to certain seller-provided financing, shall not apply.

SEC. 55. Section 18645 of the Revenue and Taxation Code is amended to read:

18645. (a) The Franchise Tax Board may require a copy of the federal information return to be filed with the Franchise Tax Board if a federal information return was required under any of the following:

(1) Section 6039C of the Internal Revenue Code, relating to returns with respect to foreign persons holding direct investments in United States real property interests, if that person holds a direct investment in a California real property interest as defined in Section 18662.

(2) Section 6050H of the Internal Revenue Code, relating to mortgage interest received in trade or business from individuals.

(3) Section 6050J of the Internal Revenue Code, relating to foreclosures and abandonments of security.

(4) Section 6050K of the Internal Revenue Code, relating to exchanges of certain partnership interests.

(5) Section 6050L of the Internal Revenue Code, relating to certain dispositions of donated property.

(6) Section 6050N of the Internal Revenue Code, relating to returns regarding payments of royalties.

(7) Section 6050P of the Internal Revenue Code, relating to returns relating to the cancellation of indebtedness by certain financial entities.

(8) Section 6050Q of the Internal Revenue Code, relating to certain long-term care benefits.

(9) Section 6050R of the Internal Revenue Code, relating to returns relating to certain purchases of fish.

(b) Every person required to make a return under subdivision (a) shall also furnish a statement to each person whose name is required to be set forth in the return, as required to do so by the Internal Revenue Code.

(c) A transferor of a partnership interest shall be required to notify the partnership of that exchange in accordance with Section 6050K(c) of the Internal Revenue Code.

(d) The Franchise Tax Board shall require a copy of the federal information return to be filed with the Franchise Tax Board if a federal information return was required under Section 6050I(a) of the Internal Revenue Code, relating to cash received in trade or business. Section 6050I(g) of the Internal Revenue Code, relating to cash received by criminal court clerks, shall not apply.

(e) (1) The Attorney General shall, upon court order following a showing ex parte to a magistrate of an articulable suspicion that an individual or entity has committed a felony offense to which a federal information return is related, be provided a copy of a federal information return filed with the Franchise Tax Board under subdivision (d). The Attorney General may make a return or information therefrom available to a district attorney subject to regulations promulgated by the Attorney General. The regulations shall require the district attorney seeking the return or information to specify in writing the specific reasons for believing that a felony offense has been committed to which the return or information is related.

(2) Any information or return obtained by the Attorney General or a district attorney pursuant to this section shall be confidential and used only for investigative or prosecutorial purposes.

SEC. 56. Section 18648.5 is added to the Revenue and Taxation Code, to read:

18648.5. (a) Section 6115 of the Internal Revenue Code, relating to disclosure related to quid pro quo contributions, shall apply, except as otherwise provided.

(b) The requirements of subdivision (a) shall be treated as being satisfied upon a showing that the requirements in Section 6115 of the Internal Revenue Code have been met with respect to that contribution for federal purposes.

(c) The provisions of this section shall apply to quid pro quo contributions made on or after January 1, 1997.

SEC. 56.5. Section 19136.2 is added to the Revenue and Taxation Code, to read:

19136.2. For taxable years beginning on or after January 1, 1998, and before January 1, 1999, Section 6654(d)(1)(C)(i) of the Internal

Revenue Code, relating to limitation on use of preceding year's tax, shall not apply.

SEC. 57. Section 19136.3 is added to the Revenue and Taxation Code, to read:

19136.3. (a) No addition to tax shall be made under Section 19136 for any period before April 16, 1998, with respect to any underpayment of an installment for the 1997 taxable year, to the extent that the underpayment was created or increased by any provision of the act adding this section.

(b) No addition to tax shall be made under Section 19142 for any period before April 16, 1998, with respect to any underpayment of an installment for the 1997 income year, to the extent that the underpayment was created or increased by any provision of the act adding this section.

(c) The Franchise Tax Board shall adopt procedures, forms, and instructions necessary to implement this section in a reasonable manner.

SEC. 58. Section 19141.2 is added to the Revenue and Taxation Code, to read:

19141.2. (a) Section 6038 of the Internal Revenue Code, relating to information with respect to certain foreign corporations, shall apply, except as otherwise provided.

(b) Section 6038(a) is modified as follows:

(1) The information required to be filed with the Franchise Tax Board under this section shall be a copy of the information required to be filed with the Internal Revenue Service.

(2) The term "United States person," as defined in Section 7701(a)(30) of the Internal Revenue Code, shall be limited to a domestic corporation, as defined in Section 7701(a) of the Internal Revenue Code, or a bank, as defined in Section 23039, that is subject to the tax imposed under Chapter 2 (commencing with Section 23101), Chapter 2.5 (commencing with Section 23400), or Chapter 3 (commencing with Section 23501), of Part 11.

(c) (1) Unless it is shown that the failure is due to reasonable cause and not due to willful neglect, a penalty shall be imposed under this part for failure to furnish information and that penalty shall be determined in accordance with Section 6038 of the Internal Revenue Code, except as otherwise provided.

(2) No penalty shall be imposed under paragraph (1) if the copy of the information required to be filed with the Internal Revenue Service was not attached to the taxpayer's return as originally filed but the taxpayer does both of the following:

(A) Furnishes the copy of the information required to be filed with the Internal Revenue Service either upon its own initiative or within 90 days of notification by the Franchise Tax Board of the requirements of this section.

(B) Agrees to attach a copy of the information required to be filed with the Internal Revenue Service to the taxpayer's original return filed for subsequent income years.

(3) All or any portion of the penalty imposed under paragraph (1) may be waived by the Franchise Tax Board when the taxpayer has entered into a voluntary disclosure agreement under Article 8 (commencing with Section 19191) of Chapter 4.

(4) The penalty imposed under this subdivision shall not apply to returns required to be filed for income years beginning before January 1, 1998.

(d) This section shall apply to returns required to be filed for income years beginning on or after January 1, 1997.

SEC. 59. Section 19144 of the Revenue and Taxation Code is amended to read:

19144. For the purposes of Section 19142 the amount of the underpayment shall be the excess of—

(a) (1) The amount of the installment which would be required to be paid if the estimated tax were equal to the applicable percentage of the tax shown on the return for the income year, or (2) in the case of the tax imposed by Article 3 (commencing with Section 23181) of Chapter 2 of Part 11 an amount equal to the applicable percentage of the lesser of the tax computed at the rate provided by Section 19024 (but otherwise on the basis of the facts shown on the return and the law applicable to the income year), or the tax shown on the return for the income year as prescribed by Section 19021, or (3) if no return was filed, the applicable percentage of the tax for that year, over

(b) The amount, if any, of the installment paid on or before the last date prescribed for payment.

(c) For purposes of this section, the "applicable percentage" shall be as follows:

(1) For income years beginning before January 1, 1998, 95 percent.

(2) For income years beginning on or after January 1, 1998, 100 percent.

SEC. 60. Section 19164 of the Revenue and Taxation Code is amended to read:

19164. (a) (1) An accuracy-related penalty shall be imposed under this part and shall be determined in accordance with the provisions of Section 6662 of the Internal Revenue Code, relating to imposition of accuracy-related penalty.

(2) With respect to banks and corporations, this subdivision shall apply to all of the following:

(A) All income years beginning on or after January 1, 1990.

(B) Any other income year for which an assessment is made after July 16, 1991.

(C) For purposes of this section, references in Section 6662(e) of the Internal Revenue Code and the regulations thereunder, relating

to treatment of an affiliated group that files a consolidated federal return, are modified to apply to those entities required to be included in a combined report under Section 25101 or 25110. For these purposes, entities included in a combined report pursuant to paragraph (4) or (6) of subdivision (a) of Section 25110 shall be considered only to the extent required to be included in the combined report.

(b) The modifications to Section 6662 of the Internal Revenue Code by Public Law 103-66 and Public Law 103-465 shall apply with respect to returns filed for income years beginning on or after January 1, 1997.

(c) A fraud penalty shall be imposed under this part and shall be determined in accordance with the provisions of Section 6663 of the Internal Revenue Code, relating to imposition of fraud penalty.

(d) The provisions of Section 6664 of the Internal Revenue Code, relating to definitions and special rules, shall apply.

(e) The provisions of Section 6665 of the Internal Revenue Code, relating to applicable rules, shall apply.

SEC. 60.5. Section 19164 of the Revenue and Taxation Code is amended to read:

19164. (a) (1) An accuracy-related penalty shall be imposed under this part and shall be determined in accordance with the provisions of Section 6662 of the Internal Revenue Code, relating to imposition of accuracy-related penalty.

(2) With respect to corporations, this subdivision shall apply to all of the following:

(A) All income years beginning on or after January 1, 1990.

(B) Any other income year for which an assessment is made after July 16, 1991.

(C) For purposes of this section, references in Section 6662(e) of the Internal Revenue Code and the regulations thereunder, relating to treatment of an affiliated group that files a consolidated federal return, are modified to apply to those entities required to be included in a combined report under Section 25101 or 25110. For these purposes, entities included in a combined report pursuant to paragraph (4) or (6) of subdivision (a) of Section 25110 shall be considered only to the extent required to be included in the combined report.

(b) The modifications to Section 6662 of the Internal Revenue Code by Public Law 103-66 and Public Law 103-465 shall apply with respect to returns filed for income years beginning on or after January 1, 1997.

(c) A fraud penalty shall be imposed under this part and shall be determined in accordance with the provisions of Section 6663 of the Internal Revenue Code, relating to imposition of fraud penalty.

(d) The provisions of Section 6664 of the Internal Revenue Code, relating to definitions and special rules, shall apply.

(e) The provisions of Section 6665 of the Internal Revenue Code, relating to applicable rules, shall apply.

SEC. 61. Section 19182.5 is added to the Revenue and Taxation Code, to read:

19182.5. (a) A penalty shall be imposed for failing to meet the requirements of Section 18648.5 and the penalty amount shall be determined in accordance with Section 6714 of the Internal Revenue Code.

(b) No penalty shall be imposed under paragraph (1) upon a showing that the requirements in Section 6115 of the Internal Revenue Code have been met with respect to that contribution for federal purposes.

(c) The provisions of this section shall apply to quid pro quo contributions made on or after January 1, 1997.

SEC. 62. Section 19184 of the Revenue and Taxation Code is amended to read:

19184. (a) A penalty of fifty dollars ($50) shall be imposed for each failure, unless it is shown that the failure is due to reasonable cause, by any person required to file who fails to file a report at the time and in the manner required by either of the following provisions:

(1) Subdivision (c) of Section 17507, relating to individual retirement accounts.

(2) Section 220(h) of the Internal Revenue Code, relating to medical savings accounts.

(b) (1) Any individual who:

(A) Is required to furnish information under Section 17508 as to the amount designated nondeductible contributions made for any taxable year, and

(B) Overstates the amount of those contributions made for that taxable year,

shall pay a penalty of one hundred dollars ($100) for each overstatement unless it is shown that the overstatement is due to reasonable cause.

(2) Any individual who fails to file a form required to be filed by the Franchise Tax Board under Section 17508 shall pay a penalty of fifty dollars ($50) for each failure unless it is shown that the failure is due to reasonable cause.

(c) Article 3 (commencing with Section 19031) of this chapter (relating to deficiency assessments) shall not apply in respect of the assessment or collection of any penalty imposed under this section.

SEC. 63. Section 19365 is added to the Revenue and Taxation Code, to read:

19365. (a) (1) A corporation electing to be treated as an "S corporation" under Chapter 4.5 (commencing with Section 23800) of Part 11 may file an application for the transfer of an overpayment with respect to payments of estimated tax for income years beginning in 1997 to the personal income tax accounts of its shareholders. An

application under this subdivision shall not constitute a claim for credit or refund.

(2) An application under this subdivision shall be verified in the manner prescribed by Section 18621 in the case of the taxpayer, and shall be filed in the manner and form prescribed by the Franchise Tax Board. The application shall set forth all of the following:

(A) The amount the "S corporation" estimates as its tax liability under this part for the taxable year, which shall not be less than the greater of $1^1/_2$ percent of its net income or the applicable minimum franchise tax.

(B) The amount and date of the estimated tax paid during the income year.

(C) For each shareholder affected, his or her name, social security account number, address, and percentage of ownership, and any changes in that percentage of ownership for the S corporation's income year, the amount of each overpayment to be transferred, and the date the amount was paid.

(D) Any other information for purposes of carrying out this section as may be required by the Franchise Tax Board.

(b) (1) Within a period of 45 days from the date on which an application for a transfer is filed under subdivision (a), the Franchise Tax Board shall make, to the extent it deems practicable in that period, a limited examination of the application to discover omissions and errors therein, and shall determine the final amount of the transfers upon the basis of the application and the examination, except that the Franchise Tax Board may disallow, without further action, any application which it finds contains material omissions or errors which it deems cannot be corrected within the 45-day period.

(2) The Franchise Tax Board, within the 45-day period referred to in paragraph (1), may credit the amount of the overpayment against any liability on the part of the taxpayer under Part 11 (commencing with Section 23001).

(3) In the event the amount available for transfer is less than requested by the taxpayer, the overpayment amount shall be allocated among the shareholders on a pro rata basis based on their percentage of ownership stated on the application.

(4) For purposes of Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), and this part, the transferred amounts shall be treated as if they had been estimated tax payments paid by the respective shareholders on the date originally paid by the corporation.

(5) No application under subdivision (a) shall be allowed unless the amount to be transferred equals or exceeds five hundred dollars ($500).

(6) Each S corporation which files an application for transfer of overpayments under subdivision (a) shall furnish to each person who is a shareholder at any time during the income year a statement

showing amounts and dates of the overpayments being transferred to that person's personal income tax account.

SEC. 63.5. Section 23038.5 of the Revenue and Taxation Code is amended to read:

23038.5. (a) Section 7704 of the Internal Revenue Code, relating to certain publicly traded partnerships treated as corporations, shall apply, except as otherwise provided.

(b) (1) Section 7704(a) of the Internal Revenue Code shall not apply to an electing 1987 partnership.

(2) For purposes of this subdivision, the term "electing 1987 partnership" means any publicly traded partnership if all of the following apply:

(A) The partnership is an existing partnership (as defined in Section 10211(c)(2) of the Revenue Reconciliation Act of 1987).

(B) Section 7704(a) of the Internal Revenue Code has not applied (and without regard to Section 7704(c)(1) of the Internal Revenue Code would not have applied) to that partnership for all prior taxable years beginning after December 31, 1987, and before January 1, 1998.

(C) (i) The partnership has made the election under Section 7704(g)(1)(C) of the Internal Revenue Code (as added by Public Law 105-34) for federal tax purposes.

(ii) The election for federal tax purposes described in clause (i) shall be treated as a binding election and a separate election for state tax purposes shall not be allowed under paragraph (3) of subdivision (e) of Section 23051.5.

(iii) The election for federal tax purposes described in clause (i) shall be treated as a binding consent to the application of the tax imposed under paragraph (3) and a separate election for state tax purposes shall not be allowed under paragraph (3) of subdivision (e) of Section 23051.5.

(D) A partnership which, but for this subparagraph, would be treated as an electing 1987 partnership shall cease to be so treated (and the election under subparagraph (C) shall cease to be in effect) as of the first day after December 31, 1997, that the partnership is no longer treated as an electing 1987 partnership for federal tax purposes (and the election under Section 7704(g)(1)(C) of the Internal Revenue Code (as added by Public Law 105-34) ceases to be in effect for federal tax purposes).

(3) (A) There is hereby imposed for each taxable year beginning on or after January 1, 1998, on the gross income of each electing 1987 partnership a tax equal to 1 percent of that partnership's gross income from all sources reportable to this state, taking into account Section 25101 and any election under Section 25110, attributable to the active conduct of trades and businesses by the partnership.

(B) The tax shall be due and payable on the dated the return of the partnership is required to be filed under Section 18633, shall be collected and refunded in the same manner as other taxes imposed by this part, and shall be subject to interest and applicable penalties.

(C) For purposes of this paragraph, in the case of a partnership which is a partner in another partnership, the gross income referred to in subparagraph (A) shall include the partnership's distributive share of the gross income of the other partnership from all sources reportable to this state, taking into account Section 25101 and any election under Section 25110, attributable to the active conduct of trades and businesses of that other partnership. A similar rule shall apply in the case of lower-tiered partnerships.

(D) The tax imposed by this paragraph shall be treated as imposed by this part other than for purposes of determining the amount of any credit allowable under this part.

(4) The provisions of this subdivision shall apply to the taxable year for which the election described in clause (i) of subparagraph (C) of paragraph (2) is made for federal purposes and all subsequent taxable years unless revoked by the partnership for federal purposes. Any revocation made for federal purposes shall be treated as a binding revocation under this part, but, once so revoked, may not be reinstated and a separate revocation for state purposes shall not be allowed under paragraph (3) of subdivision (e) of Section 23051.5.

(c) The amendment made to this section by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 1998.

SEC. 64. Section 23045 of the Revenue and Taxation Code is amended to read:

23045. For purposes of this part:

(a) Section 7702 of the Internal Revenue Code, relating to life insurance contracts, shall apply, except as otherwise provided.

(b) Section 7702A of the Internal Revenue Code, relating to modified endowment contracts, shall apply, except as otherwise provided.

(c) Section 7702B of the Internal Revenue Code, relating to treatment of qualified long-term care insurance, shall apply, except as otherwise provided.

SEC. 65. Section 23453 of the Revenue and Taxation Code is amended to read:

23453. (a) There shall be allowed as a credit against the regular tax (as defined by subdivision (c) of Section 23455), for any taxable year, an amount equal to the minimum tax credit for that taxable year.

(b) For purposes of subdivision (a), the minimum tax credit shall be determined in accordance with Section 53 of the Internal Revenue Code, except as otherwise provided in this part.

(c) For purposes of this chapter, the amount determined under Section 53(c)(1) of the Internal Revenue Code shall be the regular tax as defined by subdivision (c) of Section 23455, reduced by the sum of the credits allowable under this part other than that portion of any credit which reduces the tax below the tentative minimum tax as provided in paragraph (1) of subdivision (d) of Section 23036.

(d) Section 53(d)(1)(B)(ii)(II) of the Internal Revenue Code, relating to credit not allowed for exclusion preferences, is modified to include subdivision (b) of Section 23457, as a specified item.

SEC. 66. Section 23456 of the Revenue and Taxation Code is amended to read:

23456. For purposes of this part, Section 56 of the Internal Revenue Code is modified as follows:

(a) (1) Section 56(a)(2) of the Internal Revenue Code, relating to mining exploration and development costs, shall apply only to expenses incurred during income years beginning on or after January 1, 1988.

(2) Section 56(a)(5) of the Internal Revenue Code, relating to pollution control facilities, shall apply only to amounts allowable as a deduction under Section 24372.3.

(b) Section 56(c)(2) of the Internal Revenue Code, relating to Merchant Marine Capital Construction Funds, shall not be applicable.

(c) For purposes of applying Section 56(d) of the Internal Revenue Code, all references to "December 31, 1986," are modified to read "December 31, 1987," and all references to "January 1, 1987," are modified to read "January 1, 1988."

(d) Section 56(d)(1) of the Internal Revenue Code, relating to the alternative tax net operating loss deduction, is modified to include the provisions of Section 25108.

(e) For each income year beginning on or after January 1, 1988, and before January 1, 1990, Section 56(f)(2)(E) of the Internal Revenue Code, as it read during that period, is modified to refer to both of the following:

(1) Cooperatives under Section 24404 in lieu of the deduction allowed under Section 1382(b) of the Internal Revenue Code.

(2) Credit unions under Section 24405 as though the deduction allowed under Section 1382(b) of the Internal Revenue Code applied to credit unions.

(f) Section 56(g) of the Internal Revenue Code, relating to adjustments based on adjusted current earnings, is modified to provide that for corporations whose income is determined under Chapter 17 (commencing with Section 25101), adjusted current earnings shall be allocated and apportioned in the same manner as net income is allocated and apportioned for purposes of the regular tax. In addition, each of the following shall apply:

(1) Sections 56(g)(1)(A) and 56(g)(3) of the Internal Revenue Code are modified to provide that the term "adjusted current earnings" means the sum of the adjusted current earnings of that corporation apportionable to this state and the adjusted current earnings allocable to this state.

(2) Section 56(g)(1)(B) of the Internal Revenue Code is modified to provide that the term "alternative minimum taxable income" means the sum of the alternative minimum taxable income of that

corporation apportionable to this state and the alternative minimum taxable income allocable to this state.

(g) Section 56(g)(4)(A) of the Internal Revenue Code is modified to provide the following:

(1) In the case of any property placed in service on or after January 1, 1981, and prior to January 1, 1987, other than residential rental property for which an election was made under former Section 24349.5, the amount allowable as depreciation or amortization with respect to that property shall be the same amount that would have been allowable for the income year had the taxpayer depreciated the property under the straight line method for each income year of the useful life (determined without regard to Section 24354.2) for which the taxpayer has held the property.

(2) In the case of any property placed in service on or after January 1, 1987, and prior to January 1, 1990, other than residential rental property for which an election was made under former Section 24349.5, the amount allowable as depreciation or amortization with respect to that property shall be determined by each of the following:

(A) Taking into account the adjusted basis of that property (as determined for purposes of computing alternative minimum taxable income) as of the close of the last income year beginning before January 1, 1990.

(B) Using the straight line method over the remainder of the recovery period applicable to that property under the alternative system of Section 168(g) of the Internal Revenue Code.

(3) The amendments made to paragraph (2) by the act adding this paragraph shall apply to income years beginning on or after January 1, 1990.

(4) The last sentence of Section 56(g)(4)(A)(i) of the Internal Revenue Code, shall not apply.

(h) (1) Section 56(g)(4)(C) of the Internal Revenue Code, relating to disallowance of items not deductible in computing earnings and profits, shall be modified as follows:

(A) (i) A deduction shall be allowed for amounts allowable as a deduction for purposes of the regular tax under Sections 24402, 24410, 24411, and 25106.

(ii) For each income year beginning on or after January 1, 1990, a deduction shall be allowed for amounts allowable as a deduction to a credit union for purposes of the regular tax under Section 24405.

(B) Section 56(g)(4)(C)(ii) of the Internal Revenue Code, relating to special rule for 100-percent dividends, shall not be applicable.

(C) Section 56(g)(4)(C)(iii) of the Internal Revenue Code, relating to special rule for dividends from Section 936 companies, shall not be applicable.

(D) Section 56(g)(4)(C)(iv) of the Internal Revenue Code, relating to special rule for certain dividends received by certain cooperatives, shall not be applicable.

(2) Section 56(g)(4)(D)(ii) of the Internal Revenue Code is modified to specify that Sections 24364 and 24407 shall not apply to expenditures paid or incurred in income years beginning on or after January 1, 1990.

(3) With respect to corporations which are not subject to the tax imposed under Chapter 2 (commencing with Section 23101), the amount of interest income included in the adjusted current earnings shall not exceed the amount of interest income included for purposes of the regular tax.

(4) Appropriate adjustments shall be made to limit deductions from adjusted current earnings for interest expense in accordance with the provisions of Sections 24344 and 24425.

(i) Section 56(g)(4)(I) of the Internal Revenue Code, relating to treatment of charitable contributions, shall not apply.

SEC. 67. Section 23457 of the Revenue and Taxation Code is amended to read:

23457. For purposes of this part, Section 57 of the Internal Revenue Code is modified as follows:

(a) Section 57(a)(5) of the Internal Revenue Code, relating to tax-exempt interest, shall not be applicable.

(b) (1) (A) Section 57(a) of the Internal Revenue Code, relating to items of tax preference, is modified to include as an item of tax preference the amount by which the deduction allowable under Section 24357 would be reduced if all capital gain property were taken into account at its adjusted basis.

(B) For purposes of paragraph (A), "capital gain property" means, with respect to any contribution, any capital asset the sale of which at its fair market value at the time of the contribution would have resulted in gain which would have been long-term capital gain. For purposes of this subparagraph, any property that is property used in the trade or business, as defined in Section 1231(b) of the Internal Revenue Code, shall be treated as a capital asset.

(2) Section 57(a) of the Internal Revenue Code, relating to items of tax preference, is modified to include as an item of tax preference the amount by which the deduction allowable under Section 24348 for the taxable year for a reasonable addition to a reserve for bad debts exceeds the amount that would have been allowable had the taxpayer maintained its bad debt reserve for all taxable years on the basis of actual experience.

(c) Section 57(a)(6) of the Internal Revenue Code, relating to accelerated depreciation or amortization on certain property placed in service before January 1, 1987, is modified to read: With respect to each property as described in Section 1250(c) of the Internal Revenue Code as that provision read on April 1, 1970, the amount by which the deduction allowable for the income year for exhaustion, wear, tear, obsolescence, or amortization exceeds the depreciation deduction which would have been allowable for the income year, had the taxpayer depreciated the property under the straight line

method for each income year of its useful life (determined without regard to Section 24354.2 or 24381) for which the taxpayer has held the property.

SEC. 68. Section 23609 of the Revenue and Taxation Code is amended to read:

23609. For each income year beginning on or after January 1, 1987, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount determined in accordance with Section 41 of the Internal Revenue Code, except as follows:

(a) For each income year beginning before January 1, 1997, both of the following modifications shall apply:

(1) The reference to "20 percent" in Section 41(a)(1) of the Internal Revenue Code is modified to read "8 percent."

(2) The reference to "20 percent" in Section 41(a)(2) of the Internal Revenue Code is modified to read "12 percent."

(b) For each income year beginning on or after January 1, 1997, both of the following modifications shall apply:

(1) The reference to "20 percent" in Section 41(a)(1) of the Internal Revenue Code is modified to read "11 percent."

(2) The reference to "20 percent" in Section 41(a)(2) of the Internal Revenue Code is modified to read "24 percent."

(c) "Qualified research" and "basic research" shall include only research conducted in California.

(d) The provisions of Section 41(e)(7)(A) of the Internal Revenue Code, shall be modified so that "basic research," for purposes of this section, includes any basic or applied research including scientific inquiry or original investigation for the advancement of scientific or engineering knowledge or the improved effectiveness of commercial products, except that the term does not include any of the following:

(1) Basic research conducted outside California.

(2) Basic research in the social sciences, arts, or humanities.

(3) Basic research for the purpose of improving a commercial product if the improvements relate to style, taste, cosmetic, or seasonal design factors.

(4) Any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (including oil and gas).

(e) (1) In the case of a taxpayer engaged in any biopharmaceutical research activities that are described in Codes 2833 to 2836, inclusive, or any research activities that are described in Codes 3826, 3829, or 3841 to 3845, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, or any other biotechnology research and development activities, the provisions of Section 41(e)(6) of the Internal Revenue Code shall be modified to include both of the following:

(A) A qualified organization as described in Section 170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an institution of higher education as described in Section 3304(f) of the Internal Revenue Code.

(B) A charitable research hospital owned by an organization that is described in Section 501(c)(3) of the Internal Revenue Code, is exempt from taxation under Section 501(a) of the Internal Revenue Code, is not a private foundation, is designated a "specialized laboratory cancer center," and has received Clinical Cancer Research Center status from the National Cancer Institute.

(2) For purposes of this subdivision:

(A) "Biopharmaceutical research activities" means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities that make use of chemical compounds to produce commercial products.

(B) "Other biotechnology research and development activities" means research and development activities consisting of the application of recombinant DNA technology to produce commercial products, as well as research and development activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(f) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(g) Section 41(b)(3)(C) of the Internal Revenue Code, relating to amounts paid to certain research consortia, shall not apply.

(h) Section 41(c)(3)(B)(i)(I) of the Internal Revenue Code, relating to startup companies, shall not apply.

(i) Section 41(c)(4) of the Internal Revenue Code, relating to election of alternative incremental credit, shall not apply.

(j) Section 41(c)(6) of the Internal Revenue Code, relating to gross receipts, is modified to take into account only those gross receipts from the sale of property held primarily for sales to customers in the ordinary course of the taxpayer's trade or business that is delivered or shipped to a purchaser within this state, regardless of f.o.b. point or other conditions of sale.

(k) Section 41(h) of the Internal Revenue Code, relating to termination, shall not apply.

(*l*) Section 41(g) of the Internal Revenue Code, relating to special rule for passthrough of credit, is modified by each of the following:

(1) The last sentence shall not apply.

(2) If the amount determined under Section 41(a) of the Internal Revenue Code for any income year exceeds the limitation of Section

41(g) of the Internal Revenue Code, that amount may be carried over to other income years under the rules of subdivision (f); except that the limitation of Section 41(g) of the Internal Revenue Code shall be taken into account in each subsequent income year.

(m) The amendments made to this section by the act adding this subdivision shall apply only to income years beginning on or after January 1, 1997.

SEC. 69. Section 23701h of the Revenue and Taxation Code is repealed.

SEC. 70. Section 23701h is added to the Revenue and Taxation Code, to read:

23701h. A corporation described in Section 501(c)(2) of the Internal Revenue Code, relating to certain title-holding companies.

SEC. 71. Section 23732 of the Revenue and Taxation Code is amended to read:

23732. Section 512 of the Internal Revenue Code, relating to unrelated business taxable income, shall apply, except as otherwise provided.

(a) Section 512(a)(2) of the Internal Revenue Code, relating to special rules for foreign organizations, shall not be applicable.

(b) Section 512(a)(3) of the Internal Revenue Code, relating to special rules applicable to certain organizations, shall be modified as follows:

(1) The reference to Section 501(c)(7) of the Internal Revenue Code, relating to clubs organized for pleasure, recreation, and other nonprofitable purposes, shall be modified to refer to Section 23701g.

(2) The reference to Section 501(c)(9) of the Internal Revenue Code, relating to voluntary employees' beneficiary associations, shall be modified to refer to Section 23701i.

(3) The reference to Section 501(c)(17) of the Internal Revenue Code, relating to trusts providing for payment of supplemental unemployment compensation benefits, shall be modified to refer to Section 23701n.

(4) The reference to Section 501(c)(20) of the Internal Revenue Code, relating to qualified group legal services plans, shall be modified to refer to Section 23701q.

(c) Section 512(d) of the Internal Revenue Code, relating to treatment of dues of agricultural or horticultural organizations, shall be modified by substituting "Section 23701a" in lieu of "Section 501(c)(5)" of the Internal Revenue Code.

SEC. 72. Section 23800.5 is added to the Revenue and Taxation Code, to read:

23800.5. (a) Section 1361(b)(2)(A) of the Internal Revenue Code, relating to ineligible corporation defined, shall not apply and in lieu thereof, for purposes of Section 1361(b)(1) of the Internal Revenue Code, Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and this part, "ineligible corporation" shall include a savings and loan association, bank, or

financial corporation which uses the reserve method of accounting for bad debts described in Section 24348.

(b) Section 1361(b)(3) of the Internal Revenue Code, relating to treatment of certain wholly owned subsidiaries, is modified as follows:

(1) For purposes of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and this part:

(A) Section 1361(b)(3)(A)(i) of the Internal Revenue Code shall apply, except as provided in subparagraph (B).

(B) There is hereby imposed a tax annually in an amount equal to the applicable amount specified in paragraph (1) of subdivision (d) of Section 23153 on a qualified Subchapter S subsidiary that is incorporated under the laws of this state, qualified to transact intrastate business in this state pursuant to Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code, or doing business in this state.

(C) Every qualified Subchapter S subsidiary described in subparagraph (B) shall be subject to the tax imposed under subparagraph (B) from the earlier of the date of incorporation, qualification, or commencement of business in this state, until the effective date of dissolution or withdrawal as provided in Section 23331, or, if later, the date the corporation ceases to do business in this state.

(2) For purposes of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and this part:

(A) Section 1361(b)(3)(A)(ii) of the Internal Revenue Code shall not apply and, in lieu thereof, subparagraph (B) shall apply and all references to Section 1361(b)(3)(A)(ii) of the Internal Revenue Code shall be treated as a reference to subparagraph (B).

(B) All activities, assets, liabilities, including liability for the tax imposed under this subdivision, and items of income, deduction, and credit of a qualified Subchapter S subsidiary shall be treated as activities (including activities for purposes of Section 23101), assets, liabilities, and those items, as the case may be, of the "S corporation."

(3) The tax imposed under this subdivision shall be due and payable on the 15th day of the fourth month of the income year of the "S corporation."

(4) Section 1361(b)(3)(B) of the Internal Revenue Code is modified to include the following requirements in addition to the requirements contained therein:

(A) The "S corporation" has in effect a valid election to treat the corporation as a qualified Subchapter S subsidiary for federal purposes.

(B) An election made by the "S corporation" under Section 1361(b)(3)(B)(ii) of the Internal Revenue Code to treat the corporation as a qualified Subchapter S subsidiary for federal purposes shall be treated for purposes of this part as an election made by the "S corporation" under this subdivision and a separate election

under paragraph (3) of subdivision (e) of Section 23051.5 shall not be allowed.

(C) No election under this subdivision shall be allowed unless the "S corporation" has made the election under Section 1361(b)(3)(B)(ii) of the Internal Revenue Code to treat the corporation as a qualified Subchapter S subsidiary for federal purposes.

(c) Section 1361(c)(7) of the Internal Revenue Code, relating to certain exempt organizations permitted as shareholders, is modified by substituting a reference to Section 23701d in lieu of the reference to Section 501(c)(3) of the Internal Revenue Code and by substituting a reference to Section 23701 in lieu of the reference to Section 501(a) of the Internal Revenue Code.

(d) Section 1361(e)(1)(B)(ii) of the Internal Revenue Code, relating to certain trusts not eligible, is modified by substituting "under Part 10 (commencing with Section 17001) or this part" in lieu of "under this subtitle."

(e) Section 1361(e)(3) of the Internal Revenue Code, relating to election, is modified to include the following provisions:

(1) An election made by the trustee under Section 1361(e) of the Internal Revenue Code to be an electing small business trust for federal purposes shall be treated for purposes of this part as an election made by the trustee under this subdivision and a separate election under paragraph (3) of subdivision (e) of Section 23051.5 shall not be allowed. Any election made shall apply to the taxable year of the trust for which made and to all subsequent taxable years of the trust, unless revoked with the consent of the Franchise Tax Board.

(2) No election under this subdivision shall be allowed unless the trustee has made the election under Section 1361(e) of the Internal Revenue Code to be an electing small business trust for federal purposes.

SEC. 73. Section 23801 of the Revenue and Taxation Code is amended to read:

23801. (a) (1) A corporation may not elect to be treated as an "S corporation" unless it has in effect for federal purposes a valid election under Section 1362(a) of the Internal Revenue Code for the same year.

(2) For income years beginning in 1987, the following shall apply:

(A) A corporation that has in effect a valid federal election for the income year beginning in 1987, shall be deemed to have elected to be treated as an "S corporation" for purposes of this part, unless that corporation elects on its return to continue to be treated as a "C corporation" for purposes of this part.

(B) A corporation to which subparagraph (A) applies, but is not required to file a return under this part, may elect to be treated as a "C corporation" for purposes of this part in the form and in the manner as the Franchise Tax Board may prescribe.

(C) A corporation that is deemed to have elected to be treated as an "S corporation" under subparagraph (A) shall, for purposes of applying the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, and Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income, be deemed to have made the election to be treated as an "S corporation" on the same date as the date of its federal election under Section 1362(a) of the Internal Revenue Code.

(3) For income years beginning in 1988 or 1989, the following shall apply:

(A) A corporation that had in effect a valid federal election for the preceding year, but was a "C corporation" for purposes of this part for that preceding year, may elect to be treated as an "S corporation" for purposes of this part by making an election in accordance with the provisions of Section 1362 of the Internal Revenue Code in the form and in the manner as the Franchise Tax Board may prescribe.

(B) A corporation that did not have in effect a valid federal election for the preceding year and that makes a federal election for the income year under Section 1362(a) of the Internal Revenue Code shall be deemed to have made an election to be treated as an "S corporation" for purposes of this part on the same date as the date of its federal election, unless that corporation elects on its return to continue to be treated as a "C corporation" for purposes of this part.

(C) A corporation to which subparagraph (B) applies, but is not required to file a return under this part, may elect to be treated as a "C corporation" for purposes of this part in a form and manner as the Franchise Tax Board may prescribe.

(D) A corporation that elects to be treated as an "S corporation" under subparagraph (A) for an income year beginning in 1988 shall, for purposes of applying the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, and Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income, be deemed to have made the election to be treated as an "S corporation" on the same date as the date of its federal election under Section 1362(a) of the Internal Revenue Code.

(4) For income years beginning on or after January 1, 1990, the following shall apply:

(A) An election under Section 1362(a) of the Internal Revenue Code, that is first effective for an income year beginning on or after January 1, 1990, shall be an election to which subdivision (e) of Section 23051.5 applies and shall be deemed to have been made for purposes of this part on the same date as the date of the federal election, unless the corporation files a California election under clause (ii) to be treated as a "C corporation" for purposes of this part.

(i) The federal "S" election shall be reported for purposes of this part in the form and manner as prescribed by the Franchise Tax Board no later than the last date allowed for filing the federal election

under Section 1362(a) of the Internal Revenue Code for that income year.

(ii) The California election to be a "C corporation" may only be made by a corporation incorporated in California or qualified to do business in California and shall be made in the form and manner prescribed by the Franchise Tax Board no later than the last date allowed for filing the federal "S" election under Section 1362(a) of the Internal Revenue Code for that income year.

(B) A corporation that has in effect a valid election under Section 1362(a) of the Internal Revenue Code, but is a "C corporation" for purposes of this part, may elect to be treated as an "S corporation" by making an election in the form and manner as prescribed by the Franchise Tax Board at the time required for making an "S" election under Section 1362(a) of the Internal Revenue Code for that income year, unless prohibited from doing so by Section 1362(g) of the Internal Revenue Code, relating to election after termination.

(C) In the event a corporation which has in effect a valid election under Section 1362(a) of the Internal Revenue Code and is not doing business in California becomes subject to this part by qualifying to do business in California, the corporation is deemed to have made an election to be treated as an "S corporation" for the income year during which the corporation qualifies to do business in California, unless the corporation files a California election in accordance with clause (ii) to be treated as a "C corporation" for that income year.

(i) The federal "S" election shall be reported for purposes of this part within two and one-half months after qualifying to do business in California in the form and manner as prescribed by the Franchise Tax Board.

(ii) The California election to be a "C corporation" shall be made in the form and manner as prescribed by the Franchise Tax Board no later than the following:

(I) For an income year beginning in 1990, two and one-half months after qualifying to do business in California.

(II) For an income year beginning on or after January 1, 1991, the last date allowed for filing a federal "S" election under Section 1362(a) of the Internal Revenue Code for that income year.

(D) (i) A corporation that is not qualified to do business in California, but is treated as an "S corporation" for federal purposes, shall be treated as an "S corporation" for purposes of this part, and its shareholders shall be treated as shareholders of an "S corporation."

(ii) If a corporation described in clause (i) elected to be treated as a "C corporation" under this section prior to its amendment by the act adding this paragraph during the 1989–90 Regular Session, that election shall be revoked for income years beginning on or after January 1, 1990. The corporation shall be treated as an "S corporation" for purposes of this part, and its shareholders shall be treated as shareholders of an "S corporation."

(E) For purposes of this section, "qualified to do business in California" or "qualifying to do business in California" means incorporating or obtaining a certificate of qualification pursuant to the Corporations Code.

(F) For purposes of this section:

(i) A timely election to be treated as a "C corporation" shall be treated as a revocation and Section 1362(g) of the Internal Revenue Code, relating to election after termination, shall apply.

(ii) An untimely election to be treated as a "C corporation" shall be null and void and shall not be applied to either the current or any subsequent income year.

(5) For income years beginning on or after January 1, 1997, the provisions of paragraph (4) shall apply, subject to the following modifications:

(A) A corporation that elects "S corporation" status under Section 1362 of the Internal Revenue Code for federal purposes but which is not qualified to be an "S corporation" under subdivision (a) of Section 23800.5, shall not be an "S corporation" for purposes of Part 10 (commencing with Section 17001) and this part.

(B) (i) A corporation that becomes an "S corporation" for an income year beginning before January 1, 1997, under the provisions of Section 1305 of the Small Business Job Protection Act of 1996 (P.L. 104-188) for federal purposes, shall become an "S corporation" for purposes of Part 10 (commencing with Section 17001) and this part, for its first income year beginning on or after January 1, 1997, unless a timely election to continue as a "C corporation" is made.

(ii) For purposes of clause (i), an election shall be considered timely if made no later than the earlier of the date that is 180 days after the date of enactment of the act adding this paragraph or the due date, without regard to extensions, of the return for its first income year beginning on or after January 1, 1997.

(C) (i) A corporation that makes a valid federal election to be an "S corporation" during the period in 1997 before the date of enactment of the act adding this paragraph and which would not qualify to be an "S corporation" under this part on the date of the federal election shall become an "S corporation" for purposes of Part 10 (commencing with Section 17001) and this part, for its first income year beginning on or after January 1, 1997, unless a timely election to continue as a "C corporation" is made.

(ii) For purposes of clause (i), an election shall be considered timely if made no later than the earlier of the date that is 180 days after the date of enactment of the act adding this paragraph or the due date, without regard to extensions, of the return for its first income year beginning on or after January 1, 1997.

(b) If a corporation subject to tax under this part elects to be treated as an "S corporation" and has one or more shareholders who are nonresidents of this state or is a trust with a nonresident fiduciary, each of the following shall be required:

(1) Each nonresident shareholder or fiduciary shall file with the return a statement of consent by that shareholder or fiduciary to be subject to the jurisdiction of the State of California to tax the shareholder's pro rata share of the income attributable to California sources.

(2) An "S corporation" shall include in its return for each income year a list of shareholders in the form and in the manner prescribed by the Franchise Tax Board.

(3) Failure to meet the requirements of this subdivision shall be grounds for retroactive revocation by the Franchise Tax Board of the election pursuant to this chapter.

(c) Except as provided in subdivision (d), a corporation that makes a valid election to be treated as an "S corporation" for purposes of this part shall not be included in a combined report pursuant to Chapter 17 (commencing with Section 25101).

(d) (1) In cases where the Franchise Tax Board determines that the reported income or loss of a group of commonly owned or controlled corporations (within the meaning of Section 25105), which includes one or more corporations electing to be treated as an "S corporation" under Chapter 4.5 (commencing with Section 23800), does not clearly reflect income (or loss) of a member of that group or represents an evasion of tax by one or more members of that group, and the Franchise Tax Board determines that the comparable uncontrolled price method prescribed by regulations pursuant to Section 482 of the Internal Revenue Code cannot practically be applied, the Franchise Tax Board may, in lieu of other methods prescribed by regulations pursuant to Section 482 of the Internal Revenue Code, apply methods of unitary combination, pursuant to Article 1 (commencing with Section 25101) of Chapter 17, to properly reflect the income or loss of the members of the group.

(2) The application of the provisions of this subdivision shall not affect the election of any corporation to be treated as an "S corporation."

(e) The tax for a "C corporation" for a short year shall be determined in accordance with Chapter 13 (commencing with Section 24631), in lieu of Section 1362(e)(5) of the Internal Revenue Code.

(f) (1) A termination of a federal election pursuant to Section 1362(d) of the Internal Revenue Code, that is not an inadvertent termination pursuant to Section 1362(f) of the Internal Revenue Code, shall simultaneously terminate the "S corporation" election for purposes of Part 10 (commencing with Section 17001) and this part.

(2) A federal termination by revocation shall be effective for purposes of this part and shall be reported to the Franchise Tax Board in the form and manner prescribed by the Franchise Tax Board no later than the last date allowed for filing federal termination for that year under Section 1362(d) of the Internal Revenue Code.

(3) A corporation which is qualified to do business in California and has in effect a valid "S" election under Section 1362(a) of the Internal Revenue Code, may revoke its "S" election for purposes of this part without revoking its federal election. The revocation for purposes of this part shall be made by providing a written notification to the Franchise Tax Board in the form and manner prescribed by the Franchise Tax Board which includes the California corporation number and meets the requirements of Section 1362(d)(1) of the Internal Revenue Code.

(g) For income years beginning on or after January 1, 1990, if a corporation, which has in effect a valid "S" election under Section 1362(a) of the Internal Revenue Code, fails to make a "C corporation" election under clause (ii) of subparagraphs (A) and (C) of paragraph (4) of subdivision (a) or to terminate by revocation under paragraph (3) of subdivision (f), the corporation shall be treated as an "S corporation" pursuant to subparagraph (A) of paragraph (4) of subdivision (a).

(h) For income years beginning on or after January 1, 1997, for purposes of subparagraph (F) of paragraph (4) of subdivision (a) of this section and Section 1362(g) of the Internal Revenue Code, relating to election after termination, any termination under Section 1362(d) of the Internal Revenue Code or election to be treated as a "C corporation" under subparagraph (A) or (C) of paragraph (4) of subdivision (a), or to terminate by revocation under paragraph (3) of subdivision (f) in an income year beginning before January 1, 1997, shall not be taken into account.

(i) The provisions of Section 1362(b)(5) of the Internal Revenue Code, relating to authority to treat late elections, etc., as timely, shall apply only for income years beginning on or after January 1, 1997, with respect to elections under Section 1362(a) of the Internal Revenue Code for income years beginning on or after January 1, 1997.

(j) The provisions of Section 1362(f) of the Internal Revenue Code, relating to inadvertent invalid elections or terminations, shall apply only for income years beginning on or after January 1, 1997, with respect to elections under Section 1362(a) of the Internal Revenue Code for income years beginning on or after January 1, 1997.

SEC. 74. Section 23802 of the Revenue and Taxation Code is amended to read:

23802. (a) Section 1363(a) of the Internal Revenue Code, relating to the taxability of an "S corporation," shall not be applicable.

(b) Corporations qualifying under this chapter shall continue to be subject to the taxes imposed under Chapter 2 (commencing with Section 23101) and Chapter 3 (commencing with Section 23501), except as follows:

(1) (A) The tax imposed under Section 23151 or 23501 shall be imposed at a rate of $1^1/_2$ percent rather than the rate specified in those sections.

(B) For income years beginning on or after January 1, 1997, the following tax rates shall be substituted for the "$1^1/_2$ percent" rate specified by subparagraph (A):

(i) One and six-tenths percent for income years beginning on or after January 1, 1997, and before January 1, 1998.

(ii) One and sixty-five hundredths percent for income years beginning on or after January 1, 1998, and before January 1, 1999.

(iii) One and seven-tenths percent for income years beginning on or after January 1, 1999, and before January 1, 2000.

(iv) One and six-tenths percent for income years beginning on or after January 1, 2000.

(2) In the case of an "S corporation" which is also a financial corporation, the rate of tax specified in paragraph (1) shall be increased by the excess of the rate imposed under Section 23183 over the rate imposed under Section 23151.

(c) An "S corporation" shall be subject to the minimum franchise tax imposed under Section 23153.

(d) (1) For purposes of subdivision (b), an "S corporation" shall be allowed a deduction under Section 24416 or 24416.1 (relating to net operating loss deductions), but only with respect to losses incurred during periods in which the corporation had in effect a valid election to be treated as an "S corporation" for purposes of this part.

(2) Section 1371(b) of the Internal Revenue Code, relating to denial of carryovers between "C years" and "S years," shall apply for purposes of the tax imposed under subdivision (b), except as provided in paragraph (1).

(3) The provisions of this subdivision shall not affect the amount of any item of income or loss computed in accordance with the provisions of Section 1366 of the Internal Revenue Code, relating to passthrough items to shareholders.

(4) For purposes of subdivision (b) of Section 17276, relating to limitations on loss carryovers, losses passed through to shareholders of an "S corporation," to the extent otherwise allowable without application of that subdivision, shall be fully included in the net operating loss of that shareholder and then that subdivision shall be applied to the entire net operating loss.

(e) For purposes of computing the taxes specified in subdivision (b), an "S corporation" shall be allowed a deduction from income for built-in gains and passive investment income for which a tax has been imposed under this part in accordance with the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, or Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income.

(f) For purposes of computing taxes imposed under this part, as provided in subdivision (b)—

(1) An "S corporation" shall compute its deductions for amortization and depreciation in accordance with the provisions of Part 10 (commencing with Section 17001) of Division 2.

(2) The provisions of Section 465 of the Internal Revenue Code, relating to limitation of deductions to the amount at risk, shall be applied in the same manner as in the case of an individual.

(3) (A) The provisions of Section 469 of the Internal Revenue Code, relating to limitations on passive activity losses and credits, shall be applied in the same manner as in the case of an individual. For purposes of the tax imposed under Section 23151 or 23501, as modified by this section, material participation shall be determined in accordance with Section 469(h) of the Internal Revenue Code, relating to certain closely held "C corporations" and personal service corporations.

(B) For purposes of this paragraph, the "adjusted gross income" of the "S corporation" shall be equal to its "net income," as determined under Section 24341 with the modifications required by this subdivision, except that no deduction shall be allowed for contributions allowed by Section 24357.

(4) The exclusion provided under Section 18152.5 shall not be allowed to an "S corporation."

(g) The provisions of Section 1363(d) of the Internal Revenue Code, relating to recapture of LIFO benefits, shall be modified for purposes of this part to refer to Section 19102 in lieu of Section 6601 of the Internal Revenue Code.

SEC. 75. Section 23806 of the Revenue and Taxation Code is amended to read:

23806. (a) Section 1371(a) of the Internal Revenue Code, relating to application of Subchapter C rules, is modified to provide that, notwithstanding subdivisions (a) and (e) of Section 23051.5, an election under Section 338 of the Internal Revenue Code, relating to certain stock purchases treated as asset acquisitions, for federal purposes shall be treated as an election for purposes of this part and a separate election under paragraph (3) of subdivision (e) of Section 23051.5 shall not be allowed.

(b) Section 1371(d) of the Internal Revenue Code shall not be applicable.

SEC. 76. Section 23813 is added to the Revenue and Taxation Code, to read:

23813. Section 1377(b)(2) of the Internal Revenue Code, relating to determination defined, is modified to include, in addition to the items specified therein, the following:

(a) A decision by the State Board of Equalization that has become final.

(b) A closing agreement made under Article 6 (commencing with Section 19441) of Chapter 6 of Part 10.2.

(c) A final disposition by the Franchise Tax Board of a claim for refund.

SEC. 77. Section 24272.5 is added to the Revenue and Taxation Code, to read:

24272.5. (a) Section 7518 of the Internal Revenue Code, relating to tax incentives relating to merchant marine capital construction funds, shall apply, except as otherwise provided.

(b) Section 7518(d)(2)(C) of the Internal Revenue Code is modified as follows:

(1) By substituting "70 percent" in lieu of the reference to "the percentage applicable under Section 243(a)(1)."

(2) To refer to Section 24402 in lieu of Section 243 of the Internal Revenue Code.

(c) Section 7518(d)(2)(D) of the Internal Revenue Code is modified to refer to "interest income exempt from taxation" under this part in lieu of "interest income exempt from taxation under Section 103."

(d) Section 7518(g)(3) of the Internal Revenue Code is modified as follows:

(1) To refer to Article 6 (commencing with Section 19101) of Chapter 4 of Part 10.2 in lieu of Section 6601 of the Internal Revenue Code.

(2) To refer to Article 7 (commencing with Section 19131) of Chapter 4 of Part 10.2 in lieu of Section 6651 of the Internal Revenue Code.

(e) Section 7518(g)(6) of the Internal Revenue Code is modified as follows:

(1) By substituting a reference to "this part" in lieu of "Chapter 1" in each place in which it appears.

(2) To refer to Section 23151 in lieu of Section 11 of the Internal Revenue Code.

(3) The last sentence in Section 7518(g)(6)(A) of the Internal Revenue Code shall not apply.

SEC. 79. Section 24326 of the Revenue and Taxation Code is amended to read:

24326. (a) Section 136 of the Internal Revenue Code, relating to energy conservation subsidies provided by public utilities, shall apply, except as otherwise provided.

(b) Section 136 of the Internal Revenue Code, relating to energy conservation subsidies provided by public utilities, shall apply to amounts received on or after January 1, 1997.

SEC. 80. Section 24343.3 of the Revenue and Taxation Code is amended to read:

24343.3. Any employer contribution to a medical savings account, as defined in Section 220 of the Internal Revenue Code, relating to medical savings accounts, if otherwise deductible under this part, shall be allowed only for the income year in which paid.

SEC. 81. Section 24343.7 is added to the Revenue and Taxation Code, to read:

24343.7. (a) Section 162(e) of the Internal Revenue Code, relating to the denial of deduction for certain lobbying and political expenditures, shall not apply.

(b) (1) The deduction allowed by Section 162(a) of the Internal Revenue Code, relating to trade or business expenses, shall include all the ordinary and necessary expenses, including, but not limited to, traveling expenses described in Section 162(a)(2) of the Internal Revenue Code and the cost of preparing testimony, paid or incurred during the income year in carrying on any trade or business for any of the following:

(A) In direct connection with appearances before, submission of statements to, or sending communications to, the committees, or individual members, of Congress or of any legislative body of a state, a possession of the United States, or a political subdivision of any of the foregoing with respect to legislation or proposed legislation of direct interest to the taxpayer.

(B) In direct connection with communication of information between the taxpayer and an organization of which the taxpayer is a member with respect to legislation or proposed legislation of direct interest to the taxpayer and to that organization.

(C) That portion of the dues so paid or incurred with respect to any organization of which the taxpayer is a member which is attributable to the expenses of the activities described in subparagraphs (A) and (B) carried on by that organization.

(2) Paragraph (1) shall not be construed as allowing the deduction of any amount paid or incurred, whether by way of contribution, gift, or otherwise, with respect to either of the following:

(A) For participation in, or intervention in, any political campaign on behalf of any candidate for public office.

(B) In connection with any attempt to influence the general public, or segments thereof, with respect to legislative matters, elections, or referendums.

(c) Section 162(m) of the Internal Revenue Code, relating to certain excessive employee remuneration, shall not apply.

(d) Section 162(k)(2)(A)(ii) of the Internal Revenue Code shall not apply.

SEC. 82. Section 24349 of the Revenue and Taxation Code is amended to read:

24349. (a) There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear, and tear (including a reasonable allowance for obsolescence)—

(1) Of property used in the trade or business; or

(2) Of property held for the production of income.

(b) Except as otherwise provided in subdivision (c), for income years ending after December 31, 1958, the term "reasonable allowance" as used in subdivision (a) shall include, but shall not be limited to, an allowance computed in accordance with regulations prescribed by the Franchise Tax Board, under any of the following methods:

(1) The straight line method.

(2) The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in paragraph (1).

(3) The sum of the years-digits method.

(4) Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the taxpayer's use of the property and including the income year, does not, during the first two-thirds of the useful life of the property, exceed the total of those allowances that would have been used had those allowances been computed under the method described in paragraph (2).

Nothing in this subdivision shall be construed to limit or reduce an allowance otherwise allowable under subdivision (a).

(c) Any grapevine replaced in a vineyard in California in an income year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, shall have a useful life of five years, except that it shall have a class life of 10 years for purposes of depreciation under Section 168(g)(2) of the Internal Revenue Code where the taxpayer has made an election under Section 263A(d)(3) of the Internal Revenue Code not to capitalize costs of the infested vineyard. Every taxpayer claiming a deduction under this section with respect to a grapevine as described in this subdivision shall obtain a written certification from an independent state-certified integrated pest management advisor, or a state agricultural commissioner or advisor, that specifies that the replanting was necessary to restore a vineyard infested with phylloxera. The taxpayer shall retain the certification for future audit purposes.

(d) For purposes of this part, the deduction for property leased to governments and other tax-exempt entities, as defined in Section 168(h) of the Internal Revenue Code, shall be limited to the amount determined under Section 168(g) of the Internal Revenue Code, relating to alternative depreciation system for certain property.

(e) (1) In the case of any building erected or improvements made on leased property, if the building or improvement is property to which this section applies, the depreciation deduction shall be determined under the provisions of this section.

(2) An improvement shall be treated for purposes of determining gain or loss under this part as disposed of by the lessor when so disposed of or abandoned if both of the following occur:

(A) The improvement is made by the lessor of leased property for the lessee of that property.

(B) The improvement is irrevocably disposed of or abandoned by the lessor at the termination of the lease by the lessee.

This subdivision shall not apply to any property to which Section 168 of the Internal Revenue Code does not apply for federal purposes by reason of Section 168(f) of the Internal Revenue Code. Any election made under Section 168(f)(1) of the Internal Revenue Code

for federal purposes with respect to that property shall be treated as a binding election for state purposes under this subdivision with respect to that same property and no separate election under subdivision (e) of Section 23051.5 with respect to that property shall be allowed.

(f) (1) Section 167(g) of the Internal Revenue Code, relating to depreciation under income forecast method, shall apply, except as otherwise provided.

(2) Section 167(g)(2)(C) of the Internal Revenue Code is modified by substituting "Section 19521" in lieu of "Section 460(b)(7)" of the Internal Revenue Code.

(3) Section 167(g)(5)(D) of the Internal Revenue Code is modified by substituting "Part 10.2 (commencing with Section 18401) (other than Article 2 (commencing with Section 19021) and Sections 19142 to 19150, inclusive)" in lieu of "Subtitle F (other than Sections 6654 and 6655)."

SEC. 82.5. Section 24349 of the Revenue and Taxation Code is amended to read:

24349. (a) There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear, and tear (including a reasonable allowance for obsolescence)—

(1) Of property used in the trade or business; or

(2) Of property held for the production of income.

(b) Except as otherwise provided in subdivision (c), for income years ending after December 31, 1958, the term "reasonable allowance" as used in subdivision (a) shall include, but shall not be limited to, an allowance computed in accordance with regulations prescribed by the Franchise Tax Board, under any of the following methods:

(1) The straight-line method.

(2) The declining balance method, using a rate not exceeding twice the rate that would have been used had the annual allowance been computed under the method described in paragraph (1).

(3) The sum of the years-digits method.

(4) Any other consistent method productive of an annual allowance that, when added to all allowances for the period commencing with the taxpayer's use of the property and including the income year, does not, during the first two-thirds of the useful life of the property, exceed the total of those allowances that would have been used had those allowances been computed under the method described in paragraph (2).

Nothing in this subdivision shall be construed to limit or reduce an allowance otherwise allowable under subdivision (a).

(c) Any grapevine replaced in a vineyard in California in an income year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, and any grapevine replaced in a vineyard in California in an income year beginning on or after January 1, 1997, as a direct result of Pierce's Disease in that

vineyard, shall have a useful life of five years, except that it shall have a class life of 10 years for purposes of depreciation under Section 168(g)(2) of the Internal Revenue Code where the taxpayer has made an election under Section 263A(d)(3) of the Internal Revenue Code not to capitalize costs of the infested vineyard. Every taxpayer claiming a deduction under this section with respect to a grapevine as described in this subdivision shall obtain a written certification from an independent state-certified integrated pest management adviser, or a state agricultural commissioner or adviser, that specifies that the replanting was necessary to restore a vineyard infested with phylloxera or Pierce's Disease. The taxpayer shall retain the certification for future audit purposes.

(d) For purposes of this part, the deduction for property leased to governments and other tax-exempt entities, as defined in Section 168(h) of the Internal Revenue Code, shall be limited to the amount determined under Section 168(g) of the Internal Revenue Code, relating to alternative depreciation system for certain property.

(e) (1) In the case of any building erected or improvements made on leased property, if the building or improvement is property to which this section applies, the depreciation deduction shall be determined under the provisions of this section.

(2) An improvement shall be treated for purposes of determining gain or loss under this part as disposed of by the lessor when so disposed of or abandoned if both of the following occur:

(A) The improvement is made by the lessor of leased property for the lessee of that property.

(B) The improvement is irrevocably disposed of or abandoned by the lessor at the termination of the lease by the lessee.

This subdivision shall not apply to any property to which Section 168 of the Internal Revenue Code does not apply for federal purposes by reason of Section 168(f) of the Internal Revenue Code. Any election made under Section 168(f)(1) of the Internal Revenue Code for federal purposes with respect to that property shall be treated as a binding election for state purposes under this subdivision with respect to that same property and no separate election under subdivision (e) of Section 23051.5 with respect to that property shall be allowed.

(f) (1) Section 167(g) of the Internal Revenue Code, relating to depreciation under income forecast method, shall apply except as otherwise provided.

(2) Section 167(g)(2)(C) of the Internal Revenue Code is modified by substituting "Section 19521" in lieu of "Section 460(b)(7)" of the Internal Revenue Code.

(3) Section 167(g)(5)(D) of the Internal Revenue Code is modified by substituting "Part 10.2 (commencing with Section 18401) (other than Article 2 (commencing with Section 19021) and Sections 19142 to 19150, inclusive)" in lieu of "Subtitle F (other than Sections 6654 and 6655)."

SEC. 83. Section 24355 of the Revenue and Taxation Code is amended to read:

24355. Section 167(f) of the Internal Revenue Code, relating to treatment of property excluded from Section 197, shall apply, except as otherwise provided.

SEC. 84. Section 24355.5 of the Revenue and Taxation Code is amended to read:

24355.5. (a) Section 197 of the Internal Revenue Code, relating to amortization of goodwill and certain other intangibles, shall apply, except as otherwise provided.

(b) (1) Section 13261(g) of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to effective dates, shall apply, except as otherwise provided.

(2) (A) If a taxpayer has, at any time, made an election for federal purposes under Section 13261(g)(2) of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to election to have amendments apply to property acquired after July 25, 1991, or Section 13261(g)(3) of that act, relating to elective binding contract exception, a separate election for state purposes shall not be allowed under paragraph (3) of subdivision (e) of Section 23051.5 and the federal election shall be binding for purposes of this part.

(B) If a taxpayer has not made an election for federal purposes under Section 13261(g)(2) of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to election to have amendments apply to property acquired after July 25, 1991, or Section 13261(g)(3) of that act, relating to elective binding contract exception, with respect to property acquired before August 11, 1993, then the taxpayer shall not be allowed to make an election under Section 13261(g) of the Revenue Reconciliation Act of 1993 (P.L. 103-66), for purposes of this part, with respect to that property.

(c) Notwithstanding any other provision of this section, each of the following shall apply:

(1) No deduction shall be allowed under this section for any income year beginning prior to January 1, 1994.

(2) No inference is intended with respect to the allowance or denial of any deduction for amortization in any income year beginning before January 1, 1994.

(3) In the case of an intangible that was acquired in an income year beginning before January 1, 1994, the amount to be amortized shall not exceed the adjusted basis of that intangible as of the first day of the first income year beginning on or after January 1, 1994, and that amount shall be amortized ratably over the period beginning with the first month of the first income year beginning on or after January 1, 1994, and ending 15 years after the month in which the intangible was acquired.

SEC. 85. Section 24357 of the Revenue and Taxation Code is amended to read:

24357. (a) There shall be allowed as a deduction any charitable contribution (as defined in Section 24359) payment of which is made within the income year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Franchise Tax Board.

(b) (1) In the case of a bank or corporation reporting its income on the accrual basis, the bank or corporation may elect to treat the contribution as paid during that income year if both of the following occur:

(A) The board of directors authorizes a charitable contribution during the income year.

(B) Payment of the contribution is made after the close of that income year and on or before the 15th day of the third month following the close of the income year.

(2) The election allowed by paragraph (1) may be made only at the time of the filing of the return for the income year, and shall be signified in the manner as the Franchise Tax Board shall by regulations prescribe.

(c) For purposes of this section, payment of a charitable contribution which consists of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to the actual possession or enjoyment of, the property have expired or are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in Section 24428. For purposes of the preceding sentence, a fixture which is intended to be severed from the real property shall be treated as tangible personal property.

(d) No deduction shall be allowed under this section for traveling expenses (including amounts expended for meals and lodging) while away from home, whether paid directly or by reimbursement, unless there is no significant element of personal pleasure, recreation, or vacation in that travel.

(e) (1) Section 170(f)(8) of the Internal Revenue Code, relating to substantiation requirement for certain contributions, shall apply, except as otherwise provided.

(2) No deduction shall be denied under Section 170(f)(8) of the Internal Revenue Code, relating to substantiation requirement for certain contributions, upon a showing that the requirements in Section 170(f)(8) of the Internal Revenue Code have been met with respect to that contribution for federal purposes.

SEC. 85.5. Section 24357 of the Revenue and Taxation Code is amended to read:

24357. (a) There shall be allowed as a deduction any charitable contribution (as defined in Section 24359) payment of which is made within the income year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Franchise Tax Board.

(b) (1) In the case of a corporation reporting its income on the accrual basis, the corporation may elect to treat the contribution as paid during that income year if both of the following occur:

(A) The board of directors authorizes a charitable contribution during the income year.

(B) Payment of the contribution is made after the close of that income year and on or before the 15th day of the third month following the close of the income year.

(2) The election allowed by paragraph (1) may be made only at the time of the filing of the return for the income year, and shall be signified in the manner as the Franchise Tax Board shall by regulations prescribe.

(c) For purposes of this section, payment of a charitable contribution that consists of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to the actual possession or enjoyment of, the property have expired or are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in Section 24428. For purposes of the preceding sentence, a fixture which is intended to be severed from the real property shall be treated as tangible personal property.

(d) No deduction shall be allowed under this section for traveling expenses (including amounts expended for meals and lodging) while away from home, whether paid directly or by reimbursement, unless there is no significant element of personal pleasure, recreation, or vacation in that travel.

(e) (1) Section 170(f)(8) of the Internal Revenue Code, relating to substantiation requirement for certain contributions, shall apply, except as otherwise provided.

(2) No deduction shall be denied under Section 170(f)(8) of the Internal Revenue Code, relating to substantiation requirement for certain contributions, upon a showing that the requirements in Section 170(f)(8) of the Internal Revenue Code have been met with respect to that contribution for federal purposes.

SEC. 86. Section 24371.5 of the Revenue and Taxation Code is repealed.

SEC. 87. Section 24372.5 of the Revenue and Taxation Code is repealed.

SEC. 88. Section 24372.5 is added to the Revenue and Taxation Code, to read:

24372.5. (a) Section 194 of the Internal Revenue Code, relating to amortization of reforestation expenditures, shall apply, except as otherwise provided.

(b) The deduction allowed by this section shall be available only with respect to qualified timber property located in this state.

SEC. 89. Section 24429 is added to the Revenue and Taxation Code, to read:

24429. Section 276 of the Internal Revenue Code, relating to certain indirect contributions to political parties, shall apply, except as otherwise provided.

SEC. 90. Section 24443 of the Revenue and Taxation Code is amended to read:

24443. (a) Section 274 of the Internal Revenue Code, relating to the disallowance of certain entertainment, gift, travel, etc., expenses, shall apply, except as otherwise provided.

(b) Section 274(a)(3) of the Internal Revenue Code, relating to denial of deduction for club dues, shall not apply.

SEC. 91. Section 24692 of the Revenue and Taxation Code is amended to read:

24692. (a) Section 469 of the Internal Revenue Code, relating to passive activity losses and credits limited, shall apply, except as otherwise provided.

(b) Section 469(c)(7) of the Internal Revenue Code, relating to special rules for taxpayers in real property business, shall not apply.

(c) Section 469(d)(2) of the Internal Revenue Code, relating to passive activity credits, is modified to refer to the following credits:

(1) The credit for research expenses allowed by Section 23609.

(2) The credit for clinical testing expenses allowed by Section 23609.5.

(3) The credit for low-income housing allowed by Section 23610.5.

(4) The credit for certain wages paid (targeted jobs) allowed by Section 23621.

(d) Section 469(g)(1)(A) of the Internal Revenue Code is modified to provide that if all gain or loss realized on the disposition of the taxpayer's entire interest in any passive activity (or former passive activity) is recognized, the excess of—

(1) The sum of—

(A) Any loss from that activity for that income year (determined after application of Section 469(b) of the Internal Revenue Code), plus

(B) Any loss realized on that disposition, over

(2) Net income or gain for the income year from all passive activities (determined without regard to losses described in paragraph (1)), shall be treated as a loss which is not from a passive activity.

(e) For purposes of applying Section 469(i) of the Internal Revenue Code, relating to the twenty-five thousand dollars ($25,000) offset for rental real estate activities, the dollar limitation for the credit allowed under Section 23610.5 (relating to low-income housing) shall be equal to seventy-five thousand dollars ($75,000) in lieu of the amount specified in Section 469(i)(2) of the Internal Revenue Code.

(f) Section 502 of the Tax Reform Act of 1986 (Public Law 99-514) shall apply.

(g) For each income year beginning on or after January 1, 1987, Section 10212 of Public Law 100-203, relating to treatment of publicly traded partnerships under Section 469 of the Internal Revenue Code, shall apply, except as otherwise provided.

(h) The amendments to Section 469(k) of the Internal Revenue Code made by Section 2004 of Public Law 100-647, relating to separate application of section in case of publicly traded partnerships, shall apply to each income year beginning on or after January 1, 1990, except as otherwise provided.

SEC. 92. The heading of Chapter 14.5 (commencing with Section 24870) of Part 11 of the Revenue and Taxation Code is amended to read:

CHAPTER 14.5. REGULATED INVESTMENT COMPANIES, REAL ESTATE INVESTMENT TRUSTS, REAL ESTATE MORTGAGE INVESTMENT CONDUITS, AND FINANCIAL ASSET SECURITIZATION INVESTMENT TRUSTS

SEC. 93. Section 24870 of the Revenue and Taxation Code is amended to read:

24870. Subchapter M of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to regulated investment companies, real estate investment trusts, real estate mortgage investment conduits, and financial asset securitization investment trusts, shall apply, except as otherwise provided in this part.

SEC. 94. Section 24875 is added to the Revenue and Taxation Code, to read:

24875. (a) A financial asset securitization investment trust (FASIT) shall be subject to the minimum franchise tax imposed under Section 23153.

(b) Section 860H(b) of the Internal Revenue Code, relating to the taxation of holder of ownership interest, shall be modified as follows:

(1) All activities of a FASIT shall be treated as activities, including for purposes of Section 23101, of the holder of the ownership interest in the FASIT.

(2) Section 860H(b)(3) of the Internal Revenue Code, shall not apply.

(c) Section 860J(d) of the Internal Revenue Code, relating to affiliated groups, shall not apply.

(d) A reference to the "rate of tax specified in Section 23151" shall be substituted for "highest rate of tax specified in Section 11(b)(1)" of the Internal Revenue Code, contained in Section 860K of the Internal Revenue Code, relating to treatment of transfers of high-yield interests to disqualified holders.

(e) Section 860L(e) of the Internal Revenue Code, relating to tax on prohibited transactions, shall not apply.

(f) For purposes of Chapter 4 of Part 10.2 (commencing with Section 19001) the taxes imposed by this section shall be treated as taxes to which the deficiency procedures of that article apply.

SEC. 96. Section 24916 of the Revenue and Taxation Code is amended to read:

24916. Proper adjustment with regard to the property shall in all cases be made as follows:

(a) For expenditures, receipts, losses, or other items properly chargeable to capital account. However, no adjustment shall be made for any of the following:

(1) Sales or use tax paid or incurred in connection with the acquisition of property for which a tax credit is claimed pursuant to Section 23612.2.

(2) Taxes or other carrying charges described in Section 24426, or for expenditures described in Sections 24364 and 24369 for which deductions have been taken in determining net income for the income year or any prior income year.

(b) For exhaustion, wear and tear, obsolescence, amortization, and depletion:

(1) In the case of banks or corporations subject to the tax imposed by Chapter 2 (commencing with Section 23101), to the extent sustained prior to January 1, 1928, and to the extent allowed (but not less than the amount allowable) under this part, except that no deduction shall be made for amounts in excess of the amount which would have been allowable had depreciation not been computed on the basis of January 1, 1928, value and amounts in excess of the adjustments required by Section 113(b)(1)(B) of the Federal Revenue Act of 1938 for depletion prior to January 1, 1932.

(2) In the case of a taxpayer subject to the tax imposed by Chapter 3, to the extent sustained prior to January 1, 1937, and for periods thereafter to the extent allowed (but not less than the amount allowable) under the provisions of this part.

(3) If a taxpayer has not claimed an amortization deduction for an emergency facility, the adjustment under paragraph (1) shall be made only to the extent ordinarily provided under Sections 24349 and 24372.

(c) In the case of stock (to the extent not provided for in the foregoing subdivisions) for the amount of distributions previously made which, under the law applicable to the year in which the distribution was made, either were tax free or were applicable in reduction of basis (not including distributions made by a corporation, which was classified as a personal service corporation under the provisions of the Federal Revenue Act of 1918 or 1921, out of its earnings or profits which were taxable in accordance with the provisions of Section 218 of the Federal Revenue Act of 1918 or 1921).

(d) (1) In the case of banks or corporations subject to the tax imposed by Chapter 2, in the case of any bond, as defined in Section 24363, to the extent of the deductions allowable pursuant to Section 24360 with respect thereto.

(2) In the case of taxpayers subject to the tax imposed by Chapter 3, in the case of any bond, as defined in Section 24363, the interest on

which is wholly exempt from the tax imposed by this part, to the extent of the amortizable bond premium disallowable as a deduction pursuant to subdivision (b) of Section 24360, and in the case of any other bond, as defined in Section 24363, to the extent of the deductions allowable pursuant to subdivision (a) of Section 24360 (or the amount applied to reduce interest payments under paragraph (2) of subdivision (a) of Section 24363.5) with respect thereto.

(3) In the case of property pledged to the Commodity Credit Corporation, to the extent of the amount received as a loan from the Commodity Credit Corporation and treated by the taxpayer as income for the year in which received pursuant to Section 24273, and to the extent of any deficiency on that loan with respect to which the taxpayer has been relieved from liability.

(e) For amounts allowed as deductions as deferred expenses under Section 616(b) of the Internal Revenue Code, relating to certain expenditures in the development of mines, and resulting in a reduction of the taxpayer's tax, but not less than the amounts allowable under that section for the income year and prior years.

(f) For amounts allowable as deductions as deferred expenses under Section 617(a) of the Internal Revenue Code, relating to certain exploration expenditures, and resulting in a reduction of the taxpayer's tax, but not less than the amounts allowable under that section for the income year and prior years.

(g) For amounts allowed as deductions as deferred expenses under subdivision (a) of Section 24366, relating to research and experimental expenditures, and resulting in a reduction of the bank or corporation's taxes under this part, but not less than the amounts allowable under that section for the income year and prior years.

(h) For amounts allowed as deductions under Sections 24356.2, 24356.3, and 24356.4.

(i) (1) To the extent provided in Section 179A(e)(6)(A) of the Internal Revenue Code, relating to basis reduction for clean-fuel vehicles and certain refueling property.

(2) This subdivision shall apply to property placed in service after June 30, 1993, without regard to income year.

(j) In the case of property the acquisition of which resulted under Section 1044 of the Internal Revenue Code, relating to rollover of publicly traded securities gain into specialized small business investment companies, in the nonrecognition of any part of the gain realized on the sale of other property, to the extent provided in Section 1044(d) of the Internal Revenue Code, relating to basis adjustments.

SEC. 96.5. Section 24916 of the Revenue and Taxation Code is amended to read:

24916. Proper adjustment with regard to the property shall in all cases be made as follows:

(a) For expenditures, receipts, losses, or other items properly chargeable to capital account. However, no adjustment shall be made for any of the following:

(1) Sales or use tax paid or incurred in connection with the acquisition of property for which a tax credit is claimed pursuant to Section 23612.2.

(2) Taxes or other carrying charges described in Section 24426, or for expenditures described in Sections 24364 and 24369 for which deductions have been taken in determining net income for the income year or any prior income year.

(b) For exhaustion, wear and tear, obsolescence, amortization, and depletion:

(1) In the case of corporations subject to the tax imposed by Chapter 2 (commencing with Section 23101), to the extent sustained prior to January 1, 1928, and to the extent allowed (but not less than the amount allowable) under this part, except that no deduction shall be made for amounts in excess of the amount which would have been allowable had depreciation not been computed on the basis of January 1, 1928, value and amounts in excess of the adjustments required by Section 113(b)(1)(B) of the Federal Revenue Act of 1938 for depletion prior to January 1, 1932.

(2) In the case of a taxpayer subject to the tax imposed by Chapter 3 (commencing with Section 23501), to the extent sustained prior to January 1, 1937, and for periods thereafter to the extent allowed (but not less than the amount allowable) under the provisions of this part.

(3) If a taxpayer has not claimed an amortization deduction for an emergency facility, the adjustment under paragraph (1) shall be made only to the extent ordinarily provided under Sections 24349 and 24372.

(c) In the case of stock (to the extent not provided for in the foregoing subdivisions) for the amount of distributions previously made which, under the law applicable to the year in which the distribution was made, either were tax free or were applicable in reduction of basis (not including distributions made by a corporation, which was classified as a personal service corporation under the provisions of the Federal Revenue Act of 1918 or 1921, out of its earnings or profits which were taxable in accordance with the provisions of Section 218 of the Federal Revenue Act of 1918 or 1921).

(d) (1) In the case of corporations subject to the tax imposed by Chapter 2 (commencing with Section 23101), in the case of any bond, as defined in Section 24363, to the extent of the deductions allowable pursuant to Section 24360 with respect thereto.

(2) In the case of taxpayers subject to the tax imposed by Chapter 3 (commencing with Section 23501), in the case of any bond, as defined in Section 24363, the interest on which is wholly exempt from the tax imposed by this part, to the extent of the amortizable bond premium disallowable as a deduction pursuant to subdivision (b) of Section 24360, and in the case of any other bond, as defined in Section

24363, to the extent of the deductions allowable pursuant to subdivision (a) of Section 24360 (or the amount applied to reduce interest payments under paragraph (2) of subdivision (a) of Section 24363.5) with respect thereto.

(3) In the case of property pledged to the Commodity Credit Corporation, to the extent of the amount received as a loan from the Commodity Credit Corporation and treated by the taxpayer as income for the year in which received pursuant to Section 24273, and to the extent of any deficiency on that loan with respect to which the taxpayer has been relieved from liability.

(e) For amounts allowed as deductions as deferred expenses under Section 616(b) of the Internal Revenue Code, relating to certain expenditures in the development of mines, and resulting in a reduction of the taxpayer's tax, but not less than the amounts allowable under that section for the income year and prior years.

(f) For amounts allowable as deductions as deferred expenses under Section 617(a) of the Internal Revenue Code, relating to certain exploration expenditures, and resulting in a reduction of the taxpayer's tax, but not less than the amounts allowable under that section for the income year and prior years.

(g) For amounts allowed as deductions as deferred expenses under subdivision (a) of Section 24366, relating to research and experimental expenditures, and resulting in a reduction of the corporation's taxes under this part, but not less than the amounts allowable under that section for the income year and prior years.

(h) For amounts allowed as deductions under Sections 24356.2, 24356.3, and 24356.4.

(i) (1) To the extent provided in Section 179A(e)(6)(A) of the Internal Revenue Code, relating to basis reduction for clean-fuel vehicles and certain refueling property.

(2) This subdivision shall apply to property placed in service after June 30, 1993, without regard to income year.

(j) In the case of property the acquisition of which resulted under Section 1044 of the Internal Revenue Code, relating to rollover of publicly traded securities gain into specialized small business investment companies, in the nonrecognition of any part of the gain realized on the sale of other property, to the extent provided in Section 1044(d) of the Internal Revenue Code, relating to basis adjustments.

SEC. 97. Section 24947 of the Revenue and Taxation Code is repealed.

SEC. 98. Section 24947 is added to the Revenue and Taxation Code, to read:

24947. (a) Section 1033(b) of the Internal Revenue Code, relating to basis of property acquired through involuntary conversion, shall apply, except as otherwise provided.

(b) Section 1033(b)(1) of the Internal Revenue Code is modified by substituting "subdivision (a) of Section 24943" in lieu of "subsection (a)(1)."

(c) Section 1033(b)(2) of the Internal Revenue Code is modified by substituting "subdivision (b) of Section 24943" in lieu of "subsection (a)(2)."

(d) Section 1033(b)(3) of the Internal Revenue Code is modified by substituting "subdivision (b) of Section 24943" in lieu of "subsection (a)(2)(E)."

SEC. 99. Section 24949.5 is added to the Revenue and Taxation Code, to read:

24949.5. (a) For purposes of Sections 24943 through 24946, Section 1033(h) of the Internal Revenue Code, relating to special rules for property damaged by presidentially declared disasters, shall apply, except as otherwise provided.

(b) For purposes of Sections 24943 through 24946, Section 1033(i) of the Internal Revenue Code, relating to nonrecognition not to apply if corporation acquires replacement property from related person, shall apply, except as otherwise provided.

(c) For purposes of Sections 24943 through 24946, Section 1033(j) of the Internal Revenue Code, relating to sales or exchanges to implement microwave relocation policy, shall apply, except as otherwise provided.

SEC. 100. Section 24954 is added to the Revenue and Taxation Code, to read:

24954. For income years beginning on or after January 1, 1996, Section 1042 of the Internal Revenue Code, relating to sales of stock to employee stock ownership plans or certain cooperatives, shall apply, except as otherwise provided.

SEC. 101. Section 24956 is added to the Revenue and Taxation Code, to read:

24956. (a) Section 1044 of the Internal Revenue Code, relating to rollover of publicly traded securities gain into specialized small business investment companies, shall apply, except as otherwise provided.

(b) The provisions of Section 1044 of the Internal Revenue Code, relating to rollover of publicly traded securities gain into specialized small business investment companies, shall not apply to any income year (or portion thereof) that those provisions (or similar provisions) are not applicable for federal income tax purposes.

SEC. 102. Section 24966.3 of the Revenue and Taxation Code is repealed.

SEC. 103. Section 24971 of the Revenue and Taxation Code is repealed.

SEC. 104. Section 24990.8 of the Revenue and Taxation Code is repealed.

SEC. 105. Section 24990.9 of the Revenue and Taxation Code is repealed.

SEC. 106. Section 24993 of the Revenue and Taxation Code is amended to read:

24993. Section 7872 of the Internal Revenue Code, relating to the treatment of loans with below market interest rates, shall apply, except as otherwise provided.

SEC. 107. Section 928.5 of the Unemployment Insurance Code is amended to read:

928.5. "Wages" also includes all of the following:

(a) Any employer contributions under a qualified cash or deferred arrangement, as defined by Section 401(k) of the Internal Revenue Code, to the extent the amount is excluded from the gross income of the employee under Section 402(e)(3) of the Internal Revenue Code.

(b) Any amount treated as an employer contribution under a state pickup plan as defined by Section 414(h)(2) of the Internal Revenue Code, only if the payments are made pursuant to a salary reduction arrangement.

(c) Any amount deferred under a nonqualified deferred compensation plan shall be taken into account, for purposes of this article, on the later of the following:

(1) When the services are performed.

(2) When there is no substantial risk of forfeiture of the right to the amount.

(d) Any amount taken into account as "wages" by reason of subdivision (c), and the income attributable thereto, shall be taxed only once and shall not thereafter be treated as "wages" for purposes of this article.

(e) For the purposes of this section, the term "nonqualified deferred compensation plan" means any plan or arrangement for deferral of compensation other than a plan described under Section 934.

SEC. 108. Section 934 of the Unemployment Insurance Code is amended to read:

934. "Wages" does not include any payment made to, or on behalf of, an employee or his or her beneficiary:

(a) From or to a trust described in Section 401(a) of the Internal Revenue Code which is exempt from tax under Section 501(a) of that code at the time of the payment, unless the payment is made to an employee of the trust as remuneration for services rendered as an employee and not as a beneficiary of the trust.

(b) Under or to an annuity plan which, at the time of the payment, is a plan described in Section 403(a) of the Internal Revenue Code.

(c) Under a simplified employee pension, as defined in Section 408(k)(1) of the Internal Revenue Code, other than any contributions described in Section 408(k)(6) of the Internal Revenue Code.

(d) Under a simple retirement account, as described in Section 408(p) of the Internal Revenue Code, other than any elective

contributions under Section 408(p)(2)(A)(i) of the Internal Revenue Code.

(e) Under or to an annuity contract described in Section 403(b) of the Internal Revenue Code, other than a payment for the purchase of the contract which is made by reason of a salary reduction agreement, whether evidenced by a written instrument or otherwise.

(f) Under or to an exempt governmental deferred compensation plan, as defined in Section 3121(v)(3) of the Internal Revenue Code.

(g) To supplement pension benefits under a plan or trust described in any of the foregoing provisions of this section to take into account some portion or all of the increase in the cost of living, as determined by the Secretary of Labor, since retirement, but only if the supplemental payments are under a plan which is treated as a welfare plan under Section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974.

SEC. 109. Sections 18601, 23801, 23802, and 23806 of the Revenue and Taxation Code, as amended by this act and Sections 17731.5, 19365, 23800.5, 23813, and 24954 as added to the Revenue and Taxation Code by this act shall only become operative if this bill and Senate Bill 5 are both enacted and become effective on or before January 1, 1998, each bill amends or adds each of these sections, and this bill is enacted after Senate Bill 5. If this bill is enacted and Senate Bill 5 is not enacted, or if any condition in the preceding sentence is not fulfilled, the sections specified in the preceding sentence shall not become operative, and notwithstanding the provisions of Sections 17024.5 and 23051.5 of the Revenue and Taxation Code, the amendments to the Internal Revenue Code made by Sections 1301 to 1317, inclusive, of the Small Business Job Protection Act of 1996 (P.L. 104-188), shall not apply.

SEC. 110. Section 6.5 of this bill incorporates amendments to Section 17062 of the Revenue and Taxation Code proposed by both this bill and SB 1106. 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 17062 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 1106, in which case Section 17062 of the Revenue and Taxation Code, as amended by SB 1106, 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. 111. Section 26.5 of this bill incorporates amendments to Section 17250 of the Revenue and Taxation Code proposed by both this bill and AB 122. 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 17250 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 122, in which case Section 17250 of the Revenue and Taxation Code, as amended by AB 122, shall remain operative only until the operative date of this bill, at which

time Section 26.5 of this bill shall become operative, and Section 26 of this bill shall not become operative.

SEC. 112. Section 60.5 of this bill incorporates amendments to Section 19164 of the Revenue and Taxation Code proposed by both this bill and AB 1040. 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 19164 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 1040, in which case Section 19164 of the Revenue and Taxation Code as amended by Section 60 of this bill, shall remain operative only until the operative date of AB 1040, at which time Section 60.5 of this bill shall become operative.

SEC. 113. Section 82.5 of this bill incorporates amendments to Section 24349 of the Revenue and Taxation Code proposed by both this bill and AB 122. 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 24349 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 122, in which case Section 24349 of the Revenue and Taxation Code, as amended by AB 122, shall remain operative only until the operative date of this bill, at which time Section 82.5 of this bill shall become operative, and Section 82 of this bill shall not become operative.

SEC. 114. Section 85.5 of this bill incorporates amendments to Section 24357 of the Revenue and Taxation Code proposed by both this bill and AB 1040. 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 24357 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 1040, in which case Section 24357 of the Revenue and Taxation Code as amended by Section 85 of this bill, shall remain operative only until the operative date of AB 1040, at which time Section 85.5 of this bill shall become operative.

SEC. 115. Section 96.5 of this bill incorporates amendments to Section 24916 of the Revenue and Taxation Code proposed by both this bill and AB 1040. 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 24916 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 1040, in which case Section 24916 of the Revenue and Taxation Code as amended by Section 96 of this bill, shall remain operative only until the operative date of AB 1040, at which time Section 96.5 of this bill shall become operative.

SEC. 116. If Sections 60.5, 85.5, and 96.5 of this bill become operative, both of the following shall apply:

(a) The amendments made to Sections 19164, 24357, and 24916 of the Revenue and Taxation Code by AB 1040 shall be applied from the original effective dates of the acts enacting Sections 19164, 24357, and 24916 of the Revenue and Taxation Code. The Legislature finds and

declares that the amendments made to Sections 19164, 24357, and 24916 of the Revenue and Taxation Code by AB 1040 are consistent with the intent of the act enacting those sections.

(b) The amendments made to Sections 19164, 24357, and 24916 of the Revenue and Taxation Code by only this bill shall be operative for taxable or income years beginning on or after January 1, 1997.

SEC. 117. The amendment to Section 928.5 of the Unemployment Insurance Code made by this act is declarative of existing law and is only for the purpose of conforming to amendments to Section 402 of the Internal Revenue Code.

SEC. 118. The amendments to Section 934 of the Unemployment Insurance Code made by this act are only for the purpose of conforming the state employment tax treatment of "Savings Incentive Match Plans For Employees of Small Employers" (simple retirement accounts) to the federal employment tax treatment as a result of Public Law 104-188.

SEC. 119. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, unless otherwise specifically provided, the provisions of this act shall be applied to taxable and income years beginning on or after January 1, 1997.

CHAPTER 612

An act to amend Sections 17054, 17062, 17152, 17273, 18510, 19184, and 23802 of, and to add Sections 17085.8, 17210.6, 17507.4, 17507.6, 18037.6, and 23712 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 1, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Section 17054 of the Revenue and Taxation Code is amended to read:

17054. In the case of individuals, the following credits for personal exemption may be deducted from the tax imposed under Section 17041 or 17048, less any increases imposed under paragraph (1) of subdivision (d) or paragraph (1) of subdivision (e), or both, of Section 17560.

(a) In the case of a single individual, a head of household, or a married individual making a separate return, a credit of fifty-one dollars ($51) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, and fifty-two dollars ($52) for taxable years beginning on or after January 1, 1988.

(b) In the case of a surviving spouse (as defined in Section 17046), or a husband and wife making a joint return, a credit of one hundred two dollars ($102) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, and one hundred four dollars ($104) for taxable years beginning on or after January 1, 1988. If one spouse was a resident for the entire taxable year and the other spouse was a nonresident for all or any portion of the taxable year, the personal exemption shall be divided equally.

(c) In addition to any other credit provided in this section, in the case of an individual who is 65 years of age or over by the end of the taxable year a credit of fifty-one dollars ($51) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, and fifty-two dollars ($52) for taxable years beginning on or after January 1, 1988.

(d) A credit of fifty-one dollars ($51) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, fifty-two dollars ($52) for taxable years beginning on or after January 1, 1988, and before January 1, 1998, one hundred twenty dollars ($120) for taxable years beginning on or after January 1, 1998, and before January 1, 1999, and two hundred twenty-two dollars ($222) for taxable years beginning on or after January 1, 1999, for each dependent (as defined in Section 17056) for whom an exemption is allowable under Section 151(c) of the Internal Revenue Code (relating to additional exemption for dependents). The increased credit allowed under this subdivision for taxable years beginning on or after January 1, 1999, shall not be adjusted pursuant to subdivision (i) for any taxable year beginning before January 1, 2000.

(e) A credit for personal exemption of fifty-one dollars ($51) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, and fifty-two dollars ($52) for taxable years beginning on or after January 1, 1988, for the taxpayer if he or she is blind at the end of his or her taxable year.

(f) A credit for personal exemption of fifty-one dollars ($51) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, and fifty-two dollars ($52) for taxable years beginning on or after January 1, 1988, for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(g) For the purposes of this section, an individual is blind only if either: his or her central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or his or her visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(h) In the case of an individual with respect to whom a credit under this section is allowable to another taxpayer for a taxable year

beginning in the calendar year in which the individual's taxable year begins, the credit amount applicable to that individual for that individual's taxable year shall be zero.

(i) For each taxable year beginning on or after January 1, 1989, the Franchise Tax Board shall compute the credits prescribed in this section. That computation shall be made as follows:

(1) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index as modified for rental equivalent homeownership for all items from June of the prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.

(2) The Franchise Tax Board shall add 100 percent to the percentage change figure which is furnished to them pursuant to paragraph (1), and divide the result by 100.

(3) The Franchise Tax Board shall multiply the immediately preceding taxable year credits by the inflation adjustment factor determined in paragraph (2), and round off the resulting products to the nearest one dollar ($1).

(4) In computing the credits pursuant to this subdivision, the credit provided in subdivision (b) shall be twice the credit provided in subdivision (a).

(j) The amendments made to this section by the act adding this subdivision shall be applied only in the computation of taxes for taxable years beginning on or after January 1, 1990.

SEC. 1.5. Section 17054 of the Revenue and Taxation Code is amended to read:

17054. In the case of individuals, the following credits for personal exemption may be deducted from the tax imposed under Section 17041 or 17048, less any increases imposed under paragraph (1) of subdivision (d) or paragraph (1) of subdivision (e), or both, of Section 17560.

(a) In the case of a single individual, a head of household, or a married individual making a separate return, a credit of fifty-one dollars ($51) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, and fifty-two dollars ($52) for taxable years beginning on or after January 1, 1988.

(b) In the case of a surviving spouse (as defined in Section 17046), or a husband and wife making a joint return, a credit of one hundred two dollars ($102) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, and one hundred four dollars ($104) for taxable years beginning on or after January 1, 1988. If one spouse was a resident for the entire taxable year and the other spouse was a nonresident for all or any portion of the taxable year, the personal exemption shall be divided equally.

(c) In addition to any other credit provided in this section, in the case of an individual who is 65 years of age or over by the end of the taxable year, a credit of fifty-one dollars ($51) for taxable years

beginning on or after January 1, 1987, and before January 1, 1988, and fifty-two dollars ($52) for taxable years beginning on or after January 1, 1988.

(d) (1) A credit of fifty-one dollars ($51) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, fifty-two dollars ($52) for taxable years beginning on or after January 1, 1988, and before January 1, 1998, one hundred twenty dollars ($120) for taxable years beginning on or after January 1, 1998, and before January 1, 1999, and two hundred twenty-two dollars ($222) for taxable years beginning on or after January 1, 1999, for each dependent (as defined in Section 17056) for whom an exemption is allowable under Section 151(c) of the Internal Revenue Code, relating to additional exemption for dependents. The increased credit allowed under this subdivision for taxable years beginning on or after January 1, 1999, shall not be adjusted pursuant to subdivision (i) for any taxable year beginning before January 1, 2000.

(2) The credit allowed under paragraph (1) shall not be denied on the basis that the identification number of the dependent, as defined in Section 17056, for whom an exemption is allowable under Section 151(c) of the Internal Revenue Code, relating to additional exemption for dependents, is not included on the return claiming the credit.

(e) A credit for personal exemption of fifty-one dollars ($51) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, and fifty-two dollars ($52) for taxable years beginning on or after January 1, 1988, for the taxpayer if he or she is blind at the end of his or her taxable year.

(f) A credit for personal exemption of fifty-one dollars ($51) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, and fifty-two dollars ($52) for taxable years beginning on or after January 1, 1988, for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(g) For the purposes of this section, an individual is blind only if either: his or her central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or his or her visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(h) In the case of an individual with respect to whom a credit under this section is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the credit amount applicable to that individual for that individual's taxable year shall be zero.

(i) For each taxable year beginning on or after January 1, 1989, the Franchise Tax Board shall compute the credits prescribed in this section. That computation shall be made as follows:

(1) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index as modified for rental equivalent homeownership for all items from June of the prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.

(2) The Franchise Tax Board shall add 100 percent to the percentage change figure which is furnished to them pursuant to paragraph (1), and divide the result by 100.

(3) The Franchise Tax Board shall multiply the immediately preceding taxable year credits by the inflation adjustment factor determined in paragraph (2), and round off the resulting products to the nearest one dollar ($1).

(4) In computing the credits pursuant to this subdivision, the credit provided in subdivision (b) shall be twice the credit provided in subdivision (a).

(j) The amendments made to this section by the act adding this subdivision shall be applied only in the computation of taxes for taxable years beginning on or after January 1, 1990.

SEC. 2. Section 17062 of the Revenue and Taxation Code is amended to read:

17062. (a) In addition to the other taxes imposed by this part, there is hereby imposed for each taxable year, a tax equal to the excess, if any, of—

(1) The tentative minimum tax for the taxable year, over

(2) The regular tax for the taxable year.

(b) For purposes of this chapter, each of the following shall apply:

(1) The tentative minimum tax shall be computed in accordance with Sections 55 to 59, inclusive, of the Internal Revenue Code, except as otherwise provided in this part.

(2) The regular tax shall be the amount of tax imposed by Section 17041 or 17048, before reduction for any credits against the tax, less any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560.

(3) (A) The provisions of Section 55(b)(1) of the Internal Revenue Code shall be modified to provide that the tentative minimum tax for the taxable year shall be equal to the following percent of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount, before reduction for any credits against the tax:

(i) For any taxable year beginning on or after January 1, 1991, and before January 1, 1996, 8.5 percent.

(ii) For any taxable year beginning on or after January 1, 1996, 7 percent.

(B) In the case of a nonresident or part-year resident, the tentative minimum tax shall be computed as if the nonresident or part-year resident were a resident for the entire year multiplied by the ratio of California adjusted gross income (as modified for purposes of this chapter) to total adjusted gross income from all sources (as modified for purposes of this chapter). For purposes of computing the tax under subparagraph (A) and gross income from all sources, the net operating loss deduction provided in Section 56(d) of the Internal Revenue Code shall be computed as if the taxpayer were a resident for all prior years.

(C) For purposes of this section, the term "California adjusted gross income" includes each of the following:

(i) For any period during which the taxpayer was a resident of this state (as defined by Section 17014), all items of adjusted gross income (as modified for purposes of this chapter), regardless of source.

(ii) For any period during which the taxpayer was not a resident of this state, only those items of adjusted gross income (as modified for purposes of this chapter) which were derived from sources within this state, determined in accordance with Chapter 11 (commencing with Section 17951).

(4) The provisions of Section 55(b)(2) of the Internal Revenue Code, relating to alternative minimum taxable income, shall be modified to provide that alternative minimum taxable income shall not include the income, adjustments, and items of tax preference attributable to any trade or business of a qualified taxpayer.

(A) For purposes of this paragraph, "qualified taxpayer" means a taxpayer who meets both of the following:

(i) Is the owner of, or has an ownership interest in, a trade or business.

(ii) Has aggregate gross receipts, less returns and allowances, of less than one million dollars ($1,000,000) during the taxable year from all trades or businesses of which the taxpayer is the owner or has an ownership interest, in the amount of that taxpayer's proportionate interest in each trade or business.

(B) (i) For purposes of this paragraph, "proportionate interest" includes an interest in a passthrough entity.

(ii) For purposes of this paragraph, "passthrough entity" means any of the following:

(I) A partnership, as defined by Section 17008.

(II) An S corporation, as provided in Chapter 4.5 (commencing with Section 23800) of Part 11.

(III) A regulated investment company, as provided in Section 24871.

(IV) A real estate investment trust, as provided in Section 24872.

(V) A real estate mortgage investment conduit, as provided in Section 24874.

(5) For taxable years beginning on or after January 1, 1998, Section 55(d)(1) of the Internal Revenue Code, relating to exemption

amount for taxpayers other than corporations, is modified, for purposes of this part, to provide the following exemption amounts in lieu of those contained therein:

(A) Fifty-seven thousand two hundred sixty dollars ($57,260) in the case of either of the following:

(i) A joint return.

(ii) A surviving spouse.

(B) Forty-two thousand nine hundred forty-five dollars ($42,945) in the case of an individual who is both of the following:

(i) Not a married individual.

(ii) Not a surviving spouse.

(C) Twenty-eight thousand three hundred sixty dollars ($28,360) in the case of either of the following:

(i) A married individual who files a separate return.

(ii) An estate or trust.

(6) For taxable years beginning on or after January 1, 1998, Section 55(d)(3) of the Internal Revenue Code, relating to the phaseout of exemption amount for taxpayers other than corporations, is modified, for purposes of this part, to provide the following phaseout of exemption amounts in lieu of those contained therein:

(A) Two hundred fourteen thousand seven hundred twenty-five dollars ($214,725) in the case of a taxpayer described in subparagraph (A) of paragraph (5).

(B) One hundred sixty-one thousand forty-four dollars ($161,044) in the case of a taxpayer described in subparagraph (B) of paragraph (5).

(C) One hundred seventeen thousand three hundred sixty-two dollars ($117,362) in the case of a taxpayer described in subparagraph (C) of paragraph (5).

(7) For each taxable year beginning on or after January 1, 1999, the Franchise Tax Board shall recompute the exemption amounts prescribed in paragraph (5) and the phaseout of exemption amounts prescribed in paragraph (6). Those computations shall be made as follows:

(A) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index for all items from June of the prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.

(B) The Franchise Tax Board shall do both of the following:

(i) Compute an inflation adjustment factor by adding 100 percent to the percentage change figure that is furnished pursuant to subparagraph (A) and dividing the result by 100.

(ii) Multiply the preceding taxable year exemption amounts and the phaseout of exemption amounts by the inflation adjustment factor determined in clause (i) and round off the resulting products to the nearest one dollar ($1).

(c) (1) Section 56(b)(1)(E) of the Internal Revenue Code, relating to standard deduction and deduction for personal exemptions not allowed, is modified, for purposes of this part, to deny the standard deduction allowed by Section 17073.5.

(2) The provisions of Section 56(h) of the Internal Revenue Code, relating to adjustment based on energy preferences, shall not apply.

(d) The provisions of Section 57(a)(5) of the Internal Revenue Code, relating to tax-exempt interest shall not apply.

(e) The last two sentences of Section 57(a)(6)(B) of the Internal Revenue Code, relating to tangible personal property, shall not apply.

(f) Section 57(a) of the Internal Revenue Code, relating to items of tax preference, is modified to include as an item of tax preference an amount equal to one-half of the amount excluded from gross income for the taxable year under Section 18152.5.

(g) The provisions of Section 59(a) of the Internal Revenue Code, relating to the alternative minimum tax foreign tax credit, shall not apply.

SEC. 2.5. Section 17062 of the Revenue and Taxation Code is amended to read:

17062. (a) In addition to the other taxes imposed by this part, there is hereby imposed for each taxable year, a tax equal to the excess, if any, of—

(1) The tentative minimum tax for the taxable year, over

(2) The regular tax for the taxable year.

(b) For purposes of this chapter, each of the following shall apply:

(1) The tentative minimum tax shall be computed in accordance with Sections 55 to 59, inclusive, of the Internal Revenue Code, except as otherwise provided in this part.

(2) The regular tax shall be the amount of tax imposed by Section 17041 or 17048, before reduction for any credits against the tax, less any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560.

(3) (A) The provisions of Section 55(b)(1) of the Internal Revenue Code shall be modified to provide that the tentative minimum tax for the taxable year shall be equal to the following percent of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount, before reduction for any credits against the tax:

(i) For any taxable year beginning on or after January 1, 1991, and before January 1, 1996, 8.5 percent.

(ii) For any taxable year beginning on or after January 1, 1996, 7 percent.

(B) In the case of a nonresident or part-year resident, the tentative minimum tax shall be computed as if the nonresident or part-year resident were a resident for the entire year multiplied by the ratio of California adjusted gross income (as modified for purposes of this chapter) to total adjusted gross income from all

sources (as modified for purposes of this chapter). For purposes of computing the tax under subparagraph (A) and gross income from all sources, the net operating loss deduction provided in Section 56(d) of the Internal Revenue Code shall be computed as if the taxpayer were a resident for all prior years.

(C) For purposes of this section, the term "California adjusted gross income" includes each of the following:

(i) For any period during which the taxpayer was a resident of this state (as defined by Section 17014), all items of adjusted gross income (as modified for purposes of this chapter), regardless of source.

(ii) For any period during which the taxpayer was not a resident of this state, only those items of adjusted gross income (as modified for purposes of this chapter) which were derived from sources within this state, determined in accordance with Chapter 11 (commencing with Section 17951).

(4) The provisions of Section 55(b)(2) of the Internal Revenue Code, relating to alternative minimum taxable income, shall be modified to provide that alternative minimum taxable income shall not include the income, adjustments, and items of tax preference attributable to any trade or business of a qualified taxpayer.

(A) For purposes of this paragraph, "qualified taxpayer" means a taxpayer who meets both of the following:

(i) Is the owner of, or has an ownership interest in, a trade or business.

(ii) Has aggregate gross receipts, less returns and allowances, of less than one million dollars ($1,000,000) during the taxable year from all trades or businesses of which the taxpayer is the owner or has an ownership interest, in the amount of that taxpayer's proportionate interest in each trade or business.

(B) (i) For purposes of this paragraph, "proportionate interest" includes an interest in a passthrough entity.

(ii) For purposes of this paragraph, "passthrough entity" means any of the following:

(I) A partnership, as defined by Section 17008.

(II) An S corporation, as provided in Chapter 4.5 (commencing with Section 23800) of Part 11.

(III) A regulated investment company, as provided in Section 24871.

(IV) A real estate investment trust, as provided in Section 24872.

(V) A real estate mortgage investment conduit, as provided in Section 24874.

(5) For taxable years beginning on or after January 1, 1998, Section 55(d)(1) of the Internal Revenue Code, relating to exemption amount for taxpayers other than corporations is modified, for purposes of this part, to provide the following exemption amounts in lieu of those contained therein:

(A) Fifty-seven thousand two hundred sixty dollars ($57,260) in the case of either of the following:

(i) A joint return.

(ii) A surviving spouse.

(B) Forty-two thousand nine hundred forty-five dollars ($42,945) in the case of an individual who is both of the following:

(i) Not a married individual.

(ii) Not a surviving spouse.

(C) Twenty-eight thousand three hundred sixty dollars ($28,360) in the case of either of the following:

(i) A married individual who files a separate return.

(ii) An estate or trust.

(6) For taxable years beginning on or after January 1, 1998, Section 55(d)(3) of the Internal Revenue Code, relating to the phaseout of exemption amount for taxpayers other than corporations is modified, for purposes of this part, to provide the following phaseout of exemption amounts in lieu of those contained therein:

(A) Two hundred fourteen thousand seven hundred twenty-five dollars ($214,725) in the case of a taxpayer described in subparagraph (A) of paragraph (5).

(B) One hundred sixty-one thousand forty-four dollars ($161,044) in the case of a taxpayer described in subparagraph (B) of paragraph (5).

(C) One hundred seventeen thousand three hundred sixty-two dollars ($117,362) in the case of a taxpayer described in subparagraph (C) of paragraph (5).

(7) For each taxable year beginning on or after January 1, 1999, the Franchise Tax Board shall recompute the exemption amounts prescribed in paragraph (5) and the phaseout of exemption amounts prescribed in paragraph (6). Those computations shall be made as follows:

(A) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index for all items from June of the prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.

(B) The Franchise Tax Board shall do both of the following:

(i) Compute an inflation adjustment factor by adding 100 percent to the percentage change figure that is furnished pursuant to subparagraph (A) and dividing the result by 100.

(ii) Multiply the preceding taxable year exemption amounts and the phaseout of exemption amounts by the inflation adjustment factor determined in clause (i) and round off the resulting products to the nearest one dollar ($1).

(c) Section 56(b)(1)(E) of the Internal Revenue Code, relating to standard deduction and deduction for personal exemptions not allowed, is modified, for purposes of this part, to deny the standard deduction allowed by Section 17073.5.

(d) The provisions of Section 57(a)(5) of the Internal Revenue Code, relating to tax-exempt interest shall not apply.

(e) (1) Section 57(a) of the Internal Revenue Code, relating to items of tax preference, is modified to include as an item of tax preference the amount by which the deduction allowable under Section 170 of the Internal Revenue Code, relating to charitable contributions or gifts, or Section 642(c) of the Internal Revenue Code, relating to deduction for amounts paid or permanently set aside for a charitable purpose, would be reduced if all capital gain property were taken into account at its adjusted basis.

(2) For purposes of paragraph (1), the term "capital gain property" has the meaning given to that term by Section 170(b)(1)(C)(iv) of the Internal Revenue Code. That term shall not include any property to which an election under Section 170(b)(1)(C)(iii) of the Internal Revenue Code applies.

(f) Section 57(a) of the Internal Revenue Code, relating to items of tax preference, is modified to include as an item of tax preference an amount equal to one-half of the amount excluded from gross income for the taxable year under Section 18152.5.

(g) The provisions of Section 59(a) of the Internal Revenue Code, relating to the alternative minimum tax foreign tax credit, shall not apply.

SEC. 3. Section 17085.8 is added to the Revenue and Taxation Code, to read:

17085.8. (a) Section 72 of the Internal Revenue Code, relating to 10 percent additional tax on early distributions from qualified retirement plans, is modified as follows:

(1) Section 72(t)(2) of the Internal Revenue Code, relating to subsection not to apply to certain distributions, is modified to additionally provide that distributions to an individual from an individual retirement plan to the extent the distributions do not exceed the qualified higher education expenses, as defined in paragraph (2), of the taxpayer for the taxable year shall not be taken into account if those distributions are described in Section 72(t)(2)(A), 72(t)(2)(C), or 72(t)(2)(D) of the Internal Revenue Code or to the extent Section 72(t)(1) of the Internal Revenue Code does not apply to those distributions by reason of Section 72(t)(2)(B) of the Internal Revenue Code.

(2) For purposes of paragraph (1) "qualified higher education expenses" means qualified higher education expenses, as defined in Section 529(e)(3) of the Internal Revenue Code, for education furnished to any of the following:

(A) The taxpayer.

(B) The taxpayer's spouse.

(C) Any child, as defined in Section 151(c)(3) of the Internal Revenue Code, or grandchild of the taxpayer or the taxpayer's spouse, at an eligible educational institution, as defined in Section 529(e)(5) of the Internal Revenue Code, as added by Public Law 105-34.

(3) This subdivision shall apply to distributions after December 31, 1997, with respect to expenses paid after that date (in taxable years ending after that date), for education furnished in academic periods beginning after that date.

(b) (1) Section 72(t)(2) of the Internal Revenue Code, relating to subsection not to apply to certain distributions, is modified to additionally provide that distributions to an individual from an individual retirement plan which are qualified first-time homebuyer distributions, as defined in paragraph (2) shall not be taken into account if the distributions are described in Section 72(t)(2)(A), Section 72(t)(2)(C), or Section 72(t)(2)(D) of the Internal Revenue Code, or Section 72(t)(2)(E) of the Internal Revenue Code, as added by Public Law 105-34, or to the extent Section 72(t)(1) of the Internal Revenue Code does not apply to those distributions by reason of Section 72(t)(2)(B) of the Internal Revenue Code.

(2) For purposes of this subdivision:

(A) (i) "Qualified first-time homebuyer distribution" means any payment or distribution received by an individual to the extent the payment or distribution is used by the individual before the close of the 120th day after the day on which that payment or distribution is received to pay qualified acquisition costs with respect to a principal residence of a first-time homebuyer who is that individual, the spouse of that individual, or any child, grandchild, or ancestor of that individual or the spouse of the child, grandchild, or ancestor.

(ii) The aggregate amount of payments or distributions received by an individual which may be treated as qualified first-time homebuyer distributions for any taxable year shall not exceed the excess (if any) of—

(I) Ten thousand dollars ($10,000), over

(II) The aggregate amounts treated as qualified first-time homebuyer distribution with respect to the individual for all prior taxable years.

(B) "Qualified acquisition costs" means the costs of acquiring, constructing, or reconstructing a residence. "Qualified acquisition costs" includes any usual or reasonable settlement, financing, or other closing costs.

(C) "First-time homebuyer" means any individual if both of the following apply:

(i) The individual (and if married, the individual's spouse) had no present ownership interest in a principal residence during the two-year period ending on the date of acquisition of the principal residence to which this paragraph applies.

(ii) Section 1034(h) or 1034(k) of the Internal Revenue Code (as in effect on the day before the date of the enactment of this paragraph) did not suspend the running of any period of time specified in Section 1034 of the Internal Revenue Code (as so in effect) with respect to that individual on the day before the date the distribution is applied pursuant to subparagraph (A).

(D) "Principal residence" has the same meaning as when used in Section 17152.

(E) "Date of acquisition" means either of the following:

(i) The date on which a binding contract to acquire the principal residence to which subparagraph (A) applies is entered into.

(ii) The date on which construction or reconstruction of the principal residence is commenced.

(F) If any distribution from any individual retirement plan fails to meet the requirements of subparagraph (A) solely by reason of a delay or cancellation of the purchase or construction of the residence, the amount of the distribution may be contributed to an individual retirement plan as provided in Section 408(d)(3)(A)(i) of the Internal Revenue Code (determined by substituting "120 days" for "60 days" in that section), except that both of the following shall apply:

(i) Section 408(d)(3)(B) of the Internal Revenue Code shall not be applied to that contribution.

(ii) That amount shall not be taken into account in determining whether Section 408(d)(3)(B) of the Internal Revenue Code applies to any other amount.

(3) This subdivision shall apply to payments and distributions in taxable years beginning on or after January 1, 1998.

SEC. 4. Section 17152 of the Revenue and Taxation Code is amended to read:

17152. (a) For sales and exchanges before July 1, 1998, Section 121 of the Internal Revenue Code, relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55, is modified to additionally include both of the following:

(1) The dollar amount of the exclusion in Section 121(b) of the Internal Revenue Code shall be the same as allowed for federal purposes as determined by the taxpayer's filing status for federal purposes even though the taxpayer is prohibited from filing a joint return pursuant to Section 18521. However, in no instance shall the total amount excludable for the sale of a principal residence exceed the maximum amount allowed by Section 121(b) of the Internal Revenue Code.

(2) The three-year period in Section 121(a)(2) of the Internal Revenue Code shall be reduced by the period of the taxpayer's service, not to exceed 18 months, in the Peace Corps during the five-year period ending on the date of the sale or exchange.

(b) For taxable years beginning on or after January 1, 1998, in connection with sales and exchanges on and after July 1, 1998, Section 121 of the Internal Revenue Code, relating to one-time exclusion of gain from sale of principal residence by an individual who has attained age 55, shall not apply and in lieu of that section subdivisions (c) to (h), inclusive, shall apply. References in the Internal Revenue Code to Section 121 of the Internal Revenue Code shall instead be treated as a reference to subdivision (c) of this section.

(c) Gross income shall not include gain from the sale or exchange of property if, during the five-year period ending on the date of the sale or exchange, the property has been owned and used by the taxpayer as the taxpayer's principal residence for periods aggregating two years or more. The two-year period shall be reduced by the period of the taxpayer's service, not to exceed 18 months, in the Peace Corps during the five-year period ending on the date of the sale or exchange.

(d) (1) The amount of gain excluded from gross income under subdivision (c) with respect to any sale or exchange shall not exceed two hundred fifty thousand dollars ($250,000).

(2) Paragraph (1) shall be applied by substituting five hundred thousand dollars ($500,000) for two hundred fifty thousand dollars ($250,000) if all of the following conditions are met:

(A) A husband and wife make a joint return for the taxable year of the sale or exchange of the property.

(B) Either spouse meets the ownership requirements of subdivision (c) with respect to the property.

(C) Both spouses meet the use requirements of subdivision (c) with respect to the property.

(D) Neither spouse is ineligible for the benefits of subdivision (c) with respect to the property by reason of paragraph (3).

(3) (A) Subdivision (c) shall not apply to any sale or exchange by the taxpayer if, during the two-year period ending on the date of the sale or exchange, there was any other sale or exchange by the taxpayer to which subdivision (c) applied.

(B) Subparagraph (A) shall be applied without regard to any sale or exchange before May 7, 1997.

(4) If the taxpayer is prohibited from filing a joint return pursuant to Section 18521, subparagraph (A) of paragraph (2) shall nevertheless be treated as being satisfied if the taxpayer files a joint return for federal income tax purposes for the same taxable year. However, in no instance shall the total amount excludable from gross income under subdivision (c) with respect to any sale or exchange exceed five hundred thousand dollars ($500,000).

(e) (1) In the case of a sale or exchange that is subject to this subdivision in accordance with paragraph (2), the ownership and use requirements of subdivision (c) shall not apply and paragraph (3) of subdivision (d) shall not apply, but the amount of gain excluded from gross income under subdivision (c) with respect to the sale or exchange shall not exceed the amount that bears the same ratio to the amount that would be so excluded if those requirements had been met, as the shorter of the following two periods bears to two years:

(A) The aggregate periods, during the five-year period ending on date of the sale or exchange, during which the property has been owned and used by the taxpayer as the taxpayer's principal residence.

(B) The period after the date of the most recent prior sale or exchange by the taxpayer to which subdivision (c) applied and before the date of the sale or exchange.

(2) This subdivision shall apply to any sale or exchange if:

(A) Subdivision (c) would not, but for this subdivision, apply to the sale or exchange by reason of either of the following:

(i) A failure to meet the ownership and use requirements of subdivision (c).

(ii) Paragraph (3) of subdivision (d).

(B) The sale or exchange is by reason of a change in place of employment, health, or, to the extent provided in regulations, unforeseen circumstances.

(f) (1) For purposes of this section, in the case of an unmarried individual whose spouse is deceased on the date of the sale or exchange of property, the period the unmarried individual owned the property shall include the period the deceased spouse owned the property before death.

(2) For purposes of this section:

(A) In the case of an individual holding property transferred to that individual in a transaction described in Section 1041(a) of the Internal Revenue Code, the period the individual owns the property shall include the period the transferor owned the property.

(B) Solely for purposes of this section, an individual shall be treated as using property as that individual's principal residence during any period of ownership while that individual's spouse or former spouse is granted use of the property under a divorce or separation instrument, as defined in Section 71(b)(2) of the Internal Revenue Code.

(3) For purposes of this section, if the taxpayer holds stock as a tenant-stockholder, as defined in Section 216 of the Internal Revenue Code, in a cooperative housing corporation, as defined in Section 216 of the Internal Revenue Code:

(A) The holding requirements of subdivision (c) shall be applied to the holding of that stock.

(B) The use requirements of subdivision (c) shall be applied to the house or apartment which the taxpayer was entitled to occupy as the stockholder.

(4) (A) For purposes of this section, the destruction, theft, seizure, requisition, or condemnation of property shall be treated as the sale of the property.

(B) In applying Section 1033 of the Internal Revenue Code, relating to involuntary conversions, the amount realized from the sale or exchange of property shall be treated as being the amount determined without regard to this section, reduced by the amount of gain not included in gross income pursuant to this section.

(C) If the basis of the property sold or exchanged is determined, in whole or in part, under Section 1033(b) of the Internal Revenue Code, relating to basis of property acquired through involuntary

conversion, then the holding and use by the taxpayer of the converted property shall be treated as holding and use by the taxpayer of the property sold or exchanged.

(5) Subdivision (c) shall not apply to so much of the gain from the sale of any property as does not exceed the portion of the depreciation adjustments, as defined in Section 1250(b)(3) of the Internal Revenue Code, attributable to periods after May 6, 1997, with respect to that property.

(6) In the case of a taxpayer who becomes physically or mentally incapable of self-care, and owns property and uses the property as the taxpayer's principal residence during the five-year period described in subdivision (c) for periods aggregating at least one year, the taxpayer shall be treated as using the property as the taxpayer's principal residence during any time during the five-year period in which the taxpayer owns the property and resides in any facility, including a nursing home, licensed by a state or political subdivision to care for an individual in the taxpayer's condition.

(7) In the case of any sale or exchange, for purposes of this section:

(A) The determination of whether an individual is married shall be made as of the date of the sale or exchange.

(B) An individual legally separated from his or her spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(8) For purposes of this section:

(A) At the election of the taxpayer, this section shall not fail to apply to the sale or exchange of an interest in a principal residence by reason of that interest being a remainder interest in the residence, but this section shall not apply to any other interest in that residence which is sold or exchanged separately.

(B) Subparagraph (A) shall not apply to any sale to, or exchange with, any person who bears a relationship to the taxpayer which is described in Section 267(b) or 707(b) of the Internal Revenue Code.

(g) If a taxpayer has, at any time, made an election for federal purposes under Section 121(f) of the Internal Revenue Code, as amended by Public Law 105-34, not to have Section 121 of the Internal Revenue Code, as amended by Public Law 105-34, apply to a sale or exchange, subdivision (c) of this section shall not apply to that sale or exchange, a separate election for state purposes shall not be allowed under paragraph (3) of subdivision (e) of Section 17024.5, the federal election shall be binding for purposes of this part, and that election shall be treated as an election to include in gross income for purposes of this part all the gain from the sale or exchange of property, including that amount which, but for that election, would have been excluded from income under subdivision (c) of this section.

(h) For purposes of this section, in the case of property the acquisition of which by the taxpayer resulted under Section 1034 of the Internal Revenue Code, as applicable on the day before the date

of enactment of the act adding this subdivision, in the nonrecognition of any part of the gain realized on the sale or exchange of another residence, in determining the period for which the taxpayer has owned and used the property as the taxpayer's principal residence, there shall be included the aggregate periods for which the other residence, and each prior residence taken into account under Section 1223(7) of the Internal Revenue Code in determining the holding period of the property, had been so owned and used.

(i) For sales and exchanges on or after May 7, 1997, and on or before June 30, 1998, the provisions that require a report under Section 18643 are modified to only require a copy of the federal return required to be filed with the Secretary of the Treasury under Section 6045(e) of the Internal Revenue Code, as amended by Public Law 105-34.

SEC. 4.5. Section 17152 of the Revenue and Taxation Code is amended to read:

17152. (a) For sales and exchanges before May 7, 1997, Section 121 of the Internal Revenue Code, relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55, is modified to additionally include both of the following:

(1) The dollar amount of the exclusion in Section 121(b) of the Internal Revenue Code shall be the same as allowed for federal purposes as determined by the taxpayer's filing status for federal purposes even though the taxpayer is prohibited from filing a joint return pursuant to Section 18521. However, in no instance shall the total amount excludable for the sale of a principal residence exceed the maximum amount allowed by Section 121(b) of the Internal Revenue Code.

(2) The three-year period in Section 121(a)(2) of the Internal Revenue Code shall be reduced by the period of the taxpayer's service, not to exceed 18 months, in the Peace Corps during the five-year period ending on the date of the sale or exchange.

(b) For sales and exchanges on and after May 7, 1997, Section 121 of the Internal Revenue Code, relating to one-time exclusion of gain from sale of principal residence by an individual who has attained age 55, shall not apply and in lieu of that section subdivisions (c) to (h), inclusive, shall apply. References in the Internal Revenue Code to Section 121 of the Internal Revenue Code shall instead be treated as a reference to subdivision (c) of this section.

(c) Gross income shall not include gain from the sale or exchange of property if, during the five-year period ending on the date of the sale or exchange, the property has been owned and used by the taxpayer as the taxpayer's principal residence for periods aggregating two years or more. The two-year period shall be reduced by the period of the taxpayer's service, not to exceed 18 months, in the Peace Corps during the five-year period ending on the date of the sale or exchange.

(d) (1) The amount of gain excluded from gross income under subdivision (c) with respect to any sale or exchange shall not exceed two hundred fifty thousand dollars ($250,000).

(2) Paragraph (1) shall be applied by substituting five hundred thousand dollars ($500,000) for two hundred fifty thousand dollars ($250,000) if all of the following conditions are met:

(A) A husband and wife make a joint return for the taxable year of the sale or exchange of the property.

(B) Either spouse meets the ownership requirements of subdivision (c) with respect to the property.

(C) Both spouses meet the use requirements of subdivision (c) with respect to the property.

(D) Neither spouse is ineligible for the benefits of subdivision (c) with respect to the property by reason of paragraph (3).

(3) (A) Subdivision (c) shall not apply to any sale or exchange by the taxpayer if, during the two-year period ending on the date of the sale or exchange, there was any other sale or exchange by the taxpayer to which subdivision (c) applied.

(B) Subparagraph (A) shall be applied without regard to any sale or exchange before May 7, 1997.

(4) If the taxpayer is prohibited from filing a joint return pursuant to Section 18521, subparagraph (A) of paragraph (2) shall nevertheless be treated as being satisfied if the taxpayer files a joint return for federal income tax purposes for the same taxable year. However, in no instance shall the total amount excludable from gross income under subdivision (c) with respect to any sale or exchange exceed five hundred thousand dollars ($500,000).

(e) (1) In the case of a sale or exchange that is subject to this subdivision in accordance with paragraph (2), the ownership and use requirements of subdivision (c) shall not apply and paragraph (3) of subdivision (d) shall not apply, but the amount of gain excluded from gross income under subdivision (c) with respect to the sale or exchange shall not exceed the amount that bears the same ratio to the amount that would be so excluded if those requirements had been met, as the shorter of the following two periods bears to two years:

(A) The aggregate periods, during the five-year period ending on the date of the sale or exchange, during which the property has been owned and used by the taxpayer as the taxpayer's principal residence.

(B) The period after the date of the most recent prior sale or exchange by the taxpayer to which subdivision (c) applied and before the date of the sale or exchange.

(2) This subdivision shall apply to any sale or exchange if:

(A) Subdivision (c) would not, but for this subdivision, apply to the sale or exchange by reason of either of the following:

(i) A failure to meet the ownership and use requirements of subdivision (c).

(ii) Paragraph (3) of subdivision (d).

(B) The sale or exchange is by reason of a change in place of employment, health, or, to the extent provided in regulations, unforeseen circumstances.

(f) (1) For purposes of this section, in the case of an unmarried individual whose spouse is deceased on the date of the sale or exchange of property, the period the unmarried individual owned the property shall include the period the deceased spouse owned the property before death.

(2) For purposes of this section:

(A) In the case of an individual holding property transferred to that individual in a transaction described in Section 1041(a) of the Internal Revenue Code, the period the individual owns the property shall include the period the transferor owned the property.

(B) Solely for purposes of this section, an individual shall be treated as using property as that individual's principal residence during any period of ownership while that individual's spouse or former spouse is granted use of the property under a divorce or separation instrument, as defined in Section 71(b)(2) of the Internal Revenue Code.

(3) For purposes of this section, if the taxpayer holds stock as a tenant-stockholder, as defined in Section 216 of the Internal Revenue Code, in a cooperative housing corporation, as defined in Section 216 of the Internal Revenue Code:

(A) The holding requirements of subdivision (c) shall be applied to the holding of that stock.

(B) The use requirements of subdivision (c) shall be applied to the house or apartment which the taxpayer was entitled to occupy as the stockholder.

(4) (A) For purposes of this section, the destruction, theft, seizure, requisition, or condemnation of property shall be treated as the sale of the property.

(B) In applying Section 1033 of the Internal Revenue Code, relating to involuntary conversions, the amount realized from the sale or exchange of property shall be treated as being the amount determined without regard to this section, reduced by the amount of gain not included in gross income pursuant to this section.

(C) If the basis of the property sold or exchanged is determined, in whole or in part, under Section 1033(b) of the Internal Revenue Code, relating to basis of property acquired through involuntary conversion, then the holding and use by the taxpayer of the converted property shall be treated as holding and use by the taxpayer of the property sold or exchanged.

(5) Subdivision (c) shall not apply to so much of the gain from the sale of any property as does not exceed the portion of the depreciation adjustments, as defined in Section 1250(b)(3) of the Internal Revenue Code, attributable to periods after May 6, 1997, with respect to that property.

(6) In the case of a taxpayer who becomes physically or mentally incapable of self-care, and owns property and uses the property as the taxpayer's principal residence during the five-year period described in subdivision (c) for periods aggregating at least one year, the taxpayer shall be treated as using the property as the taxpayer's principal residence during any time during the five-year period in which the taxpayer owns the property and resides in any facility, including a nursing home, licensed by a state or political subdivision to care for an individual in the taxpayer's condition.

(7) In the case of any sale or exchange, for purposes of this section:

(A) The determination of whether an individual is married shall be made as of the date of the sale or exchange.

(B) An individual legally separated from his or her spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(8) For purposes of this section:

(A) At the election of the taxpayer, this section shall not fail to apply to the sale or exchange of an interest in a principal residence by reason of that interest being a remainder interest in the residence, but this section shall not apply to any other interest in that residence which is sold or exchanged separately.

(B) Subparagraph (A) shall not apply to any sale to, or exchange with, any person who bears a relationship to the taxpayer which is described in Section 267(b) or 707(b) of the Internal Revenue Code.

(g) If a taxpayer has, at any time, made an election for federal purposes under Section 121(f) of the Internal Revenue Code, as amended by Public Law 105-34, not to have Section 121 of the Internal Revenue Code, as amended by Public Law 105-34, apply to a sale or exchange, subdivision (c) of this section shall not apply to that sale or exchange, a separate election for state purposes shall not be allowed under paragraph (3) of subdivision (e) of Section 17024.5, the federal election shall be binding for purposes of this part, and that election shall be treated as an election to include in gross income for purposes of this part all the gain from the sale or exchange of property, including that amount which, but for that election, would have been excluded from income under subdivision (c) of this section.

(h) For purposes of this section, in the case of property the acquisition of which by the taxpayer resulted under Section 1034 of the Internal Revenue Code, as applicable on the day before the date of enactment of the act adding this subdivision, in the nonrecognition of any part of the gain realized on the sale or exchange of another residence, in determining the period for which the taxpayer has owned and used the property as the taxpayer's principal residence, there shall be included the aggregate periods for which the other residence, and each prior residence taken into account under Section 1223(7) of the Internal Revenue Code in determining the holding period of the property, had been so owned and used.

(i) For sales and exchanges on or after May 7, 1997, the provisions that require a report under Section 18643 are modified to only require a copy of the federal return required to be filed with the Secretary of the Treasury under Section 6045(e) of the Internal Revenue Code, as amended by Public Law 105-34.

SEC. 5. Section 17210.6 is added to the Revenue and Taxation Code, to read:

17210.6. For taxable years beginning on or after January 1, 1998, Section 219 of the Internal Revenue Code, relating to retirement savings, is modified as follows:

(a) Section 219(c)(1)(B)(ii) of the Internal Revenue Code is modified to substitute, in lieu of the language in that clause, "the compensation includable in the gross income of that individual's spouse for the taxable year reduced by both of the following:

(1) The amount allowed as a deduction under Section 219(a) of the Internal Revenue Code to that spouse for that taxable year.

(2) The amount of any contribution on behalf of that spouse to a Roth IRA under Section 17507.6 of that taxable year."

(b) Section 219(g)(1) of the Internal Revenue Code is modified as follows:

(1) By substituting the phrase "an individual" in lieu of the phrase "an individual or the individual's spouse."

(2) In the case of an individual who is an active participant at no time during any plan year ending with or within the taxable year but whose spouse is an active participant for any part of any of those plan years both of the following shall apply:

(A) The applicable dollar amount under Section 219(g)(3)(B)(i) of the Internal Revenue Code with respect to the taxpayer shall be one hundred fifty thousand dollars ($150,000).

(B) The amount applicable under Section 219(g)(2)(A)(ii) shall be ten thousand dollars ($10,000).

(c) Section 219(g)(2)(A)(ii) of the Internal Revenue Code is modified by substituting "ten thousand dollars ($10,000), twenty thousand dollars ($20,000) in the case of a joint return for a taxable year beginning on or after January 1, 2007)" in lieu of "ten thousand dollars ($10,000)."

(d) Section 219(g)(3)(B) of the Internal Revenue Code is modified to provide that "applicable dollar amount" means, in lieu of the amounts provided therein, the following:

(1) In the case of a taxpayer filing a joint return:

For taxable years beginning in:	The applicable dollar amount is:
1998	$50,000
1999	$51,000
2000	$52,000
2001	$53,000

2002	$54,000
2003	$60,000
2004	$65,000
2005	$70,000
2006	$75,000
2007 and thereafter	$80,000

(2) In the case of any other taxpayer (other than a married individual filing a separate return):

For taxable years beginning in:	The applicable dollar amount is:
1998	$30,000
1999	$31,000
2000	$32,000
2001	$33,000
2002	$34,000
2003	$40,000
2004	$45,000
2005 and thereafter	$50,000

(3) In the case of a married individual filing a separate return, zero.

SEC. 6. Section 17273 of the Revenue and Taxation Code is amended to read:

17273. Section 162(*l*)(1) of the Internal Revenue Code, relating to applicable percentage, is modified by substituting "25 percent" for the percentages specified in that section.

SEC. 7. Section 17507.4 is added to the Revenue and Taxation Code, to read:

17507.4. Section 408 of the Internal Revenue Code, relating to individual retirement accounts is modified as follows:

(a) Section 408(i) of the Internal Revenue Code is modified as follows:

(1) By substituting "may require" in lieu of "may require under regulations."

(2) By substituting "prescribes" in lieu of "prescribes in such regulations" in each place it appears.

(b) Section 408(m)(3) of the Internal Revenue Code shall not apply and in lieu thereof, "collectible" shall not include either of the following:

(A) Any coin which is any of the following:

(i) A gold coin described in Section 5112(a)(7), 5112(a)(8), 5112(a)(9), or 5112(a)(10) of Title 31 of the United States Code.

(ii) A silver coin described in Section 5112(e) of Title 31 of the United States Code.

(iii) A platinum coin described in Section 5112(k) of Title 31 of the United States Code.

(iv) A coin issued under the laws of any state.

(B) Any gold, silver, platinum, or palladium bullion of a fineness equal to or exceeding the minimum fineness that a contract market as described in Section 7 of the Commodity Exchange Act (7 U.S.C. Sec. 7) requires for metals which may be delivered in satisfaction of a regulated futures contract, if that bullion is in the physical possession of a trustee described under Section 408(a) of the Internal Revenue Code.

(c) This section shall apply to taxable years beginning on or after January 1, 1998.

SEC. 8. Section 17507.6 is added to the Revenue and Taxation Code, to read:

17507.6. (a) Except as provided in this section, a Roth IRA shall be treated for purposes of this part in the same manner as an individual retirement plan.

(b) For purposes of this part, "Roth IRA" means an individual retirement plan (as described in Section 7701(a)(37) of the Internal Revenue Code) which is designated at the time of establishment of the plan as a Roth IRA. That designation shall be made in the manner as the Secretary of the Treasury may prescribe unless the Franchise Tax Board prescribes differently.

(c) (1) No deduction shall be allowed under Section 219 of the Internal Revenue Code for a contribution to a Roth IRA.

(2) The aggregate amount of contributions for any taxable year to all Roth IRAs maintained for the benefit of an individual shall not exceed the excess, if any, of—

(A) The maximum amount allowable as a deduction under Section 219 of the Internal Revenue Code with respect to that individual for that taxable year (computed without regard to Section 219(d)(1) or 219(g) of the Internal Revenue Code, over

(B) The aggregate amount of contributions for that taxable year to all other individual retirement plans (other than Roth IRAs) maintained for the benefit of the individual.

(3) (A) The amount determined under paragraph (2) for any taxable year shall be reduced (but not below zero) by the amount which bears the same ratio to that amount as—

(i) The excess of—

(I) The amount required to be shown as adjusted gross income on the taxpayer's federal tax return for that same taxable year, over

(II) The applicable dollar amount, bears to

(ii) Fifteen thousand dollars ($15,000) (ten thousand dollars ($10,000) in the case of a joint return). The rules of subparagraphs (B) and (C) of Section 219(g)(2) shall apply to any reduction under this subparagraph.

(B) A taxpayer shall not be allowed to make a qualified rollover contribution to a Roth IRA from an individual retirement plan other than a Roth IRA during any taxable year if either of the following occur:

(i) The amount required to be shown as adjusted gross income on the taxpayer's federal tax return for that same taxable year exceeds one hundred thousand dollars ($100,000).

(ii) The taxpayer is a married individual filing a separate return.

(C) For purposes of this paragraph:

(i) Federal adjusted gross income shall be determined in the same manner as under Section 219(g)(3) of the Internal Revenue Code, except that any amount included in gross income under paragraph (3) of subdivision (d) shall not be taken into account and the deduction under Section 219 of the Internal Revenue Code shall be taken into account, and

(ii) The applicable dollar amount is:

(I) In the case of a taxpayer filing a joint return, one hundred and fifty thousand dollars ($150,000).

(II) In the case of any other taxpayer (other than a married individual filing a separate return), ninety-five thousand dollars ($95,000).

(III) In the case of a married individual filing a separate return, zero.

(D) Section 219(g)(4) of the Internal Revenue Code shall apply for purposes of this paragraph.

(4) Contributions to a Roth IRA may be made even after the individual for whom the account is maintained has attained age 70 $^{1}/_{2}$ years.

(5) Notwithstanding Sections 408(a)(6) and 408(b)(3) of the Internal Revenue Code, relating to required distributions, the following provisions shall not apply to any Roth IRA:

(A) Section 401(a)(9)(A) of the Internal Revenue Code.

(B) The incidental death benefit requirements of Section 401(a) of the Internal Revenue Code.

(6)(A) No rollover contribution may be made to a Roth IRA unless it is a qualified rollover contribution.

(B) A qualified rollover contribution shall not be taken into account for purposes of paragraph (2).

(7) For purposes of this section, the rule of Section 219(f)(3) of the Internal Revenue Code shall apply.

(d) For purposes of this part:

(1) (A) Any qualified distribution from a Roth IRA shall not be includable in gross income.

(B) In applying Section 72 to any distribution from a Roth IRA which is not a qualified distribution, the distribution shall be treated as made from contributions to the Roth IRA to the extent that the distribution, when added to all previous distributions from the Roth

IRA, does not exceed the aggregate amount of contributions to the Roth IRA.

(2) For purposes of this subdivision:

(A) "Qualified distribution" means any payment or distribution that is any of the following:

(i) Made on or after the date on which the individual attains age 59 1/2.

(ii) Made to a beneficiary (or to the estate of the individual) on or after the death of the individual.

(iii) Attributable to the individual's being disabled (within the meaning of Section 72(m)(7) of the Internal Revenue Code).

(iv) A qualified special purpose distribution.

(B) A payment or distribution shall not be treated as a qualified distribution under subparagraph (A) if either of the following apply:

(i) It is made within the five-taxable year period beginning with the first taxable year for which the individual made a contribution to a Roth IRA (or the individual's spouse made a contribution to a Roth IRA) established for that individual.

(ii) In the case of a payment or distribution properly allocable (as determined in the manner prescribed by the Secretary of the Treasury, unless the Franchise Tax Board prescribes otherwise) to a qualified rollover contribution from an individual retirement plan other than a Roth IRA (or income allocable thereto), it is made within the five-taxable year period beginning with the taxable year in which the rollover contribution was made.

(3) (A) Notwithstanding Section 408(d)(3) of the Internal Revenue Code, in the case of any distribution to which this paragraph applies, all of the following shall apply:

(i) There shall be included in gross income any amount which would be includable were it not part of a qualified rollover contribution.

(ii) Section 72(t) of the Internal Revenue Code shall not apply.

(iii) In the case of a distribution before January 1, 1999, any amount required to be included in gross income by reason of this paragraph shall be so included ratably over the four-taxable year period beginning with the taxable year in which the payment or distribution is made.

(B) This paragraph shall apply to a distribution from an individual retirement plan (other than a Roth IRA) maintained for the benefit of an individual which is contributed to a Roth IRA maintained for the benefit of that individual in a qualified rollover contribution.

(C) The conversion of an individual retirement plan (other than a Roth IRA) to a Roth IRA shall be treated for purposes of this paragraph as a distribution to which this paragraph applies.

(D) If, no later than the due date for filing the return of tax for any taxable year (without regard to extension), an individual transfers, from an individual retirement plan (other than a Roth IRA), contributions for that taxable year (and any earnings allocable

thereto) to a Roth IRA, none of that amount shall be includable in gross income to the extent no deduction was allowed with respect to that amount.

(E) Trustees of Roth IRAs, trustees of individual retirement plans, or both, whichever is appropriate, shall include the additional information in reports required under Section 17507 and Section 408(i) of the Internal Revenue Code as either the Franchise Tax Board or the Secretary of the Treasury may require to ensure that amounts required to be included in gross income under subparagraph (A) are so included.

(4) Section 408(d)(2) of the Internal Revenue Code shall be applied separately with respect to Roth IRAs and other individual retirement plans.

(e) For purposes of this section:

(1) "Qualified special purpose distribution" means any distribution to which Section 72(t)(2)(F) of the Internal Revenue Code, as amended by Public Law 105-34, applies.

(2) (A) Paragraph (3) of subdivision (d) shall not apply if any distribution which is not a qualified distribution under paragraph (2) of subdivision (d) is made from a Roth IRA within the five-taxable-year period beginning with the taxable year in which a distribution to which paragraph (3) of subdivision (d) would otherwise apply is made.

(B) In the case of any distribution to which subparagraph (A) applies:

(i) There shall be included in gross income in the taxable year in which the disqualifying distribution described in subparagraph (A) is made any amount that has not been previously included in gross income under clause (iii) of subparagraph (A) of paragraph (2) of subdivision (d) and which would be includable in income were it not treated as part of a qualified rollover contribution.

(ii) In the taxable year in which the disqualifying distribution described in subparagraph (A) is made, Section 72(t) of the Internal Revenue Code shall be applied to the amount which was treated as includable in gross income under clause (i) of subparagraph (A) of paragraph (2) of subdivision (d).

(3) For purposes of this section, "qualified rollover contribution" means a rollover contribution to a Roth IRA from another Roth IRA account, or from an individual retirement plan, but only if the rollover contribution meets the requirements of Section 408(d)(3) of the Internal Revenue Code. For purposes of Section 408(d)(3)(B) of the Internal Revenue Code, there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.

(f) This section shall apply to taxable years beginning on or after January 1, 1998.

SEC. 9. Section 18037.6 is added to the Revenue and Taxation Code, to read:

18037.6. For sales and exchanges after July 1, 1998:

(a) Section 1034 of the Internal Revenue Code, relating to rollover of gain on sale of principal residence, shall not apply.

(b) References in Sections 56(e), 163(h), 280A(d), 464(f), 1033(h), 1274(c), and 7872(f) of the Internal Revenue Code, and paragraph (3) of subdivision (e) of Section 18662 of the Revenue and Taxation Code, to Section 1034 of the Internal Revenue Code, shall instead be treated as a reference to Section 17152 of the Revenue and Taxation Code.

(c) Section 216(e) of the Internal Revenue Code is modified by substituting "such dwelling unit is used as his or her principal residence (with the meaning of Section 17152)" for the phrase "such exchange qualifies for nonrecognition of gain under Section 1034(f)."

(d) References in Sections 512(a), 1016(a), and 1223(7) of the Internal Revenue Code to Section 1034 of the Internal Revenue Code shall be treated as a reference to that section as in effect on the day before the date of the enactment of the act adding this section.

(e) Section 1038(e) of the Internal Revenue Code, relating to principal residences, shall be modified to provide that, under regulations prescribed by the Secretary of the Treasury under Section 1038 of the Internal Revenue Code, unless the Franchise Tax Board prescribes otherwise, Section 1038(b), (c), and (d) of the Internal Revenue Code shall not apply to the reacquisition of property and, for purposes of applying Section 17152, the resale of that property shall be treated as a part of the transaction constituting the original sale of the property, if both of the following apply:

(1) Section 1038(a) of the Internal Revenue Code applies to a reacquisition of real property with respect to the sale of which gain was not recognized under Section 17152.

(2) Within one year after the date of reacquisition of the property by the seller, that property is resold by him or her.

(f) Section 1250(d)(7) of the Internal Revenue Code, relating to disposition of principal residence, shall not apply.

(g) Section 1250(e)(3) of the Internal Revenue Code, relating to principal residence, shall not apply.

SEC. 10. Section 18510 of the Revenue and Taxation Code is amended to read:

18510. For purposes of Sections 18501, 18505, and 18521, gross income shall be computed without regard to the exclusion provided for in Section 17152.

SEC. 11. Section 19184 of the Revenue and Taxation Code is amended to read:

19184. (a) A penalty of fifty dollars ($50) shall be imposed for each failure, unless it is shown that the failure is due to reasonable cause, by any person required to file who fails to file a report at the time and in the manner required by any of the following provisions:

(1) Subdivision (c) of Section 17507, relating to individual retirement accounts.

(2) Section 220(h) of the Internal Revenue Code, relating to medical savings accounts.

(3) Subdivision (h) of Section 23712, relating to education individual retirement accounts.

(b) (1) Any individual who:

(A) Is required to furnish information under Section 17508 as to the amount designated nondeductible contributions made for any taxable year, and

(B) Overstates the amount of those contributions made for that taxable year, shall pay a penalty of one hundred dollars ($100) for each overstatement unless it is shown that the overstatement is due to reasonable cause.

(2) Any individual who fails to file a form required to be filed by the Franchise Tax Board under Section 17508 shall pay a penalty of fifty dollars ($50) for each failure unless it is shown that the failure is due to reasonable cause.

(c) Article 3 (commencing with Section 19031) of this chapter (relating to deficiency assessments) shall not apply in respect of the assessment or collection of any penalty imposed under this section.

SEC. 12. Section 23712 is added to the Revenue and Taxation Code, to read:

23712. (a) An education individual retirement account shall be exempt from taxation under Part 10 (commencing with Section 17001) and this part. Notwithstanding the preceding sentence, the education individual retirement account shall be subject to the taxes imposed by Article 2 (commencing with Section 23731).

(b) For purposes of this section:

(1) "Education individual retirement account" means a trust created or organized in the United States exclusively for the purpose of paying the qualified higher education expenses of the designated beneficiary of the trust (and designated as an education individual retirement account at the time created or organized), but only if the written governing instrument creating the trust meets the following requirements:

(A) No contribution will be accepted under any of the following conditions:

(i) In any form other than in cash.

(ii) After the date on which the beneficiary attains 18 years of age.

(iii) Except in the case of rollover contributions, if those contribution would result in aggregate contributions for the taxable year exceeding five hundred dollars ($500).

(B) The trustee is a bank (as defined in Section 408(n) of the Internal Revenue Code) or another person who demonstrates to the satisfaction of the Secretary of the Treasury, unless the Franchise Tax Board determines otherwise, that the manner in which that person will administer the trust will be consistent with the requirements of this section or who has so demonstrated with respect to any individual retirement plan.

(C) No part of the trust assets will be invested in life insurance contracts.

(D) The assets of the trust shall not be commingled with other property except in a common trust fund or common investment fund.

(E) Upon the death of the designated beneficiary, any balance to the credit of the beneficiary shall be distributed within 30 days after the date of death to the estate of that beneficiary.

(F) Upon the date of the designated beneficiary becomes 30 years of age, any balance to the credit of the beneficiary shall be distributed within 30 days after the date the beneficiary becomes 30 years of age to that beneficiary.

(2) (A) "Qualified higher education expenses" has the meaning given that term by Section 529(e)(3) of the Internal Revenue Code.

(B) "Qualified high education expenses" shall include amounts paid or incurred to make contributions to an account, under a qualified state tuition program (as defined in Section 529(b) of the Internal Revenue Code) for the benefit of the beneficiary of the account.

(3) "Eligible educational institution" has the meaning given that term by Section 529(e)(5) of the Internal Revenue Code, as added by Public Law 105-34.

(c) (1) The maximum amount which a contributor could otherwise make to an account under this section shall be reduced by an amount which bears the same ratio to that maximum amount as—

(A) The excess of—

(i) The contributor's modified adjusted gross income for the taxable year, over

(ii) Ninety-five thousand dollars ($95,000) (one hundred fifty thousand dollars ($150,000) in the case of a joint return), bears to

(B) Fifteen thousand dollars ($15,000) (ten thousand dollars ($10,000) in the case of a joint return).

(2) For purposes of paragraph (1), "modified adjusted gross income" means the amount required to be shown as adjusted gross income of the taxpayer on the federal tax return for the same taxable year, increased by any amount excluded from federal adjusted gross income under Section 911, 931, or 933 of the Internal Revenue Code on the federal tax return for the same taxable year.

(d) (1) Any distribution shall be includable in the gross income of the distributee under Part 10 (commencing with Section 17001) in the manner as provided in Section 72(b) of the Internal Revenue Code, as modified by Part 10.

(2) (A) No amount shall be includable under paragraph (1) if the qualified higher education expenses of the designated beneficiary during the taxable year are not less than the aggregate distributions during the taxable year.

(B) If the aggregate distributions exceed those expenses during the taxable year, the amount includable in gross income under

paragraph (1) shall be equal to the amount which bears the same ratio to the amount which would be includable in gross income under paragraph (1) (without regard to this subparagraph) as the qualified higher education expenses bear to those aggregate distributions.

(C) A taxpayer that has elected to waive the application of Section 530(d)(2) of the Internal Revenue Code (as added by P.L. 105-34), shall be treated as having waived the application of this paragraph, a separate election for state purposes shall not be allowed under paragraph (3) of subdivision (e) of Section 17024.5 or paragraph (3) of subdivision (e) of Section 23051.5, and the federal election shall be binding for purposes of Part 10 (commencing with Section 17001) and this part.

(3) (A) The tax imposed by Part 10 (commencing with Section 17001) for any taxable year on any taxpayer who receives a payment or distribution from an education individual retirement account which is includable in the gross income of that taxpayer under this subdivision shall be increased by 2 $^{1}/_{2}$ percent of the amount which is so includable.

(B) Subparagraph (A) shall not apply if the payment or distribution is—

(i) Made to a beneficiary (or to the estate of the designated beneficiary) on or after the death of the designated beneficiary,

(ii) Attributable to the designated beneficiary's being disabled (within the meaning of Section 72(m)(7) of the Internal Revenue Code), or

(iii) Made on account of a scholarship, allowance, or payment described in Section 25A(g)(2) of the Internal Revenue Code, as added by Public Law 105-34, received by the accountholder to the extent the amount of the payment or distribution does not exceed the amount of the scholarship, allowance, or payment.

(C) (i) Subparagraph (A) shall not apply to the distribution of any contribution made during a taxable year on behalf of a designated beneficiary to the extent that the contribution exceeds five hundred dollars ($500) if—

(I) The distribution is received on or before the day prescribed by law (including extensions of time) for filing that contributor's return for the taxable year, and

(II) The distribution is accompanied by the amount of net income attributable to that excess contribution.

(ii) Any net income described in clause (II) shall be included in the contributor's gross income under Part 10 (commencing with Section 17001) or this part for the taxable year in which that excess contribution was made.

(4) Paragraph (1) shall not apply to any amount paid or distributed from an education individual retirement account to the extent that the amount received is paid into another education individual retirement account for the benefit of the same beneficiary or a member of the family (within the meaning of Section 529(e)(2)

of the Internal Revenue Code) of that beneficiary not later than the 60th day after the date of that payment or distribution. The preceding sentence shall not apply to any payment or distribution if it applied to any prior payment or distribution during the 12-month period ending on the date of the payment or distribution.

(5) Any change in the beneficiary of an education individual retirement account shall not be treated as a distribution for purposes of paragraph (1) if the new beneficiary is a member of the family (as so defined) of the old beneficiary.

(6) Rules similar to the rules of paragraphs (7) and (8) of Section 220(f) of the Internal Revenue Code shall apply.

(e) Rules similar to the rules of paragraphs (2) and (4) of Section 408(e) of the Internal Revenue Code shall apply to any education individual retirement account.

(f) This section shall be applied without regard to any community property laws.

(g) For purposes of this section, a custodial account shall be treated as a trust if the assets of the account are held by a bank (as defined in Section 408(n) of the Internal Revenue Code) or another person who demonstrates, to the satisfaction of the Secretary of the Treasury, unless the Franchise Tax Board determines otherwise, that the manner in which he or she will administer the account will be consistent with the requirements of this section, and if the custodial account would, except for the fact that it is not a trust, constitute an account described in paragraph (1) of subdivision (b). For purposes of Part 10 (commencing with Section 17001) and this part, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of that account shall be treated as the trustee thereof.

(h) A copy of the report, which is required to be filed with the Secretary of the Treasury under Section 530(h) of the Internal Revenue Code, as enacted by Section 213 of the Taxpayer Relief Act of 1997 (P.L. 105-34), shall be filed with the Franchise Tax Board at the same time and in the same manner as specified in that section.

(i) This section shall apply to taxable and income years beginning on or after January 1, 1998.

SEC. 13. Section 23802 of the Revenue and Taxation Code is amended to read:

23802. (a) Section 1363(a) of the Internal Revenue Code, relating to the taxability of an "S corporation," shall not be applicable.

(b) Corporations qualifying under this chapter shall continue to be subject to the taxes imposed under Chapter 2 (commencing with Section 23101) and Chapter 3 (commencing with Section 23501), except as follows:

(1) The tax imposed under Section 23151 or 23501 shall be imposed at a rate of $1^1/_2$ percent rather than the rate specified in those sections.

(2) In the case of an "S corporation" which is also a financial corporation, the rate of tax specified in paragraph (1) shall be increased by the excess of the rate imposed under Section 23183 over the rate imposed under Section 23151 and Section 23184 shall be applicable.

(c) An "S corporation" shall be subject to the minimum franchise tax imposed under Section 23153.

(d) (1) For purposes of subdivision (b), an "S corporation" shall be allowed a deduction under Section 24416 or 24416.1 (relating to net operating loss deductions), but only with respect to losses incurred during periods in which the corporation had in effect a valid election to be treated as an "S corporation" for purposes of this part.

(2) Section 1371(b) of the Internal Revenue Code, relating to denial of carryovers between "C years" and "S years," shall apply for purposes of the tax imposed under subdivision (b), except as provided in paragraph (1).

(3) The provisions of this subdivision shall not affect the amount of any item of income or loss computed in accordance with the provisions of Section 1366 of the Internal Revenue Code, relating to passthrough items to shareholders.

(4) For purposes of subdivision (b) of Section 17276, relating to limitations on loss carryovers, losses passed through to shareholders of an "S corporation," to the extent otherwise allowable without application of that subdivision, shall be fully included in the net operating loss of that shareholder and then that subdivision shall be applied to the entire net operating loss.

(e) For purposes of computing the taxes specified in subdivision (b), an "S corporation" shall be allowed a deduction from income for built-in gains and passive investment income for which a tax has been imposed under this part in accordance with the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, or Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income.

(f) For purposes of computing taxes imposed under this part, as provided in subdivision (b)—

(1) An "S corporation" shall compute its deductions for amortization and depreciation in accordance with the provisions of Part 10 (commencing with Section 17001) of Division 2.

(2) The provisions of Section 465 of the Internal Revenue Code, relating to limitation of deductions to the amount at risk, shall be applied in the same manner as in the case of an individual.

(3) (A) The provisions of Section 469 of the Internal Revenue Code, relating to limitations on passive activity losses and credits, shall be applied in the same manner as in the case of an individual. For purposes of the tax imposed under Section 23151 or 23501, as modified by this section, material participation shall be determined in accordance with Section 469(h) of the Internal Revenue Code,

relating to certain closely held "C corporations" and personal service corporations.

(B) For purposes of this paragraph, the "adjusted gross income" of the "S corporation" shall be equal to its "net income," as determined under Section 24341 with the modifications required by this subdivision, except that no deduction shall be allowed for contributions allowed by Section 24357.

(4) The exclusion provided under Section 18152.5 shall not be allowed to an "S corporation."

(g) The provisions of Section 1363(d) of the Internal Revenue Code, relating to recapture of LIFO benefits, shall be modified for purposes of this part to refer to Section 19102 in lieu of Section 6601 of the Internal Revenue Code.

SEC. 14. Section 1.5 of this bill incorporates amendments to Section 17054 of the Revenue and Taxation Code proposed by both this bill and SB 455. 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 17054 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 455, in which case Section 17054 of the Revenue and Taxation Code, as amended by SB 455, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

SEC. 15. Section 2.5 of this bill incorporates amendments to Section 17062 of the Revenue and Taxation Code proposed by both this bill and SB 455. 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 17062 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 455, in which case Section 17062 of the Revenue and Taxation Code, as amended by SB 455, 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. 16. Section 4.5 of this bill incorporates amendments to Section 17152 of the Revenue and Taxation Code proposed by both this bill and SB 5. 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 17152 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 5, in which case Section 17152 of the Revenue and Taxation Code, as amended by SB 5, shall remain operative only until the operative date of this bill, at which time Section 4.5 of this bill shall become operative, and Section 4 of this bill shall not become operative.

SEC. 17. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect,

however, the provisions of this act shall be operative for taxable and income years beginning on or after January 1, 1998.

CHAPTER 613

An act to amend Sections 17052.12 and 23609 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 1, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Section 17052.12 of the Revenue and Taxation Code is amended to read:

17052.12. For each taxable year beginning on or after January 1, 1987, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) for the taxable year an amount determined in accordance with Section 41 of the Internal Revenue Code, except as follows:

(a) For each taxable year beginning before January 1, 1997, the reference to "20 percent" in Section 41(a)(1) of the Internal Revenue Code is modified to read "8 percent."

(b) For each taxable year beginning on or after January 1, 1997, the reference to "20 percent" in Section 41(a)(1) of the Internal Revenue Code is modified to read "11 percent."

(c) Section 41(a)(2) of the Internal Revenue Code, relating to basic research payments, shall not apply.

(d) "Qualified research" shall include only research conducted in California.

(e) In the case where the credit allowed under this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(f) For each taxable year beginning on or after January 1, 1998, the reference to "Section 501(a)" in Section 41(b)(3)(C) of the Internal Revenue Code, relating to contract research expenses, is modified to read "this part or Part 11 (commencing with Section 23001)."

(g) (1) For each taxable year beginning on or after January 1, 1998:

(A) The reference to "1.65 percent" in Section 41(c)(4)(A)(i) of the Internal Revenue Code is modified to read "ninety-one hundredths of one percent."

(B) The reference to "2.2 percent" in Section 41(c)(4)(A)(ii) of the Internal Revenue Code is modified to read "one and twenty-one hundredths percent."

(C) The reference to "2.75 percent" in Section 41(c)(4)(A)(iii) of the Internal Revenue Code is modified to read "one and fifty-one hundredths percent."

(2) Section 41(c)(4)(B) shall not apply and in lieu thereof an election under Section 41(c)(4)(A) of the Internal Revenue Code may be made for any taxable year of the taxpayer beginning on or after January 1, 1998. That election shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Franchise Tax Board.

(3) Section 41(c)(5) of the Internal Revenue Code, relating to gross receipts, is modified to take into account only those gross receipts from the sale of property held primarily for sale to customers in the ordinary course of the taxpayer's trade or business that is delivered or shipped to a purchaser within this state, regardless of f.o.b. point or any other condition of the sale.

(h) Section 41(h) of the Internal Revenue Code, relating to termination, shall not apply.

(i) Section 41(g) of the Internal Revenue Code, relating to special rule for passthrough of credit, is modified by each of the following:

(1) The last sentence shall not apply.

(2) If the amount determined under Section 41(a) of the Internal Revenue Code for any taxable year exceeds the limitation of Section 41(g) of the Internal Revenue Code, that amount may be carried over to other taxable years under the rules of subdivision (e); except that the limitation of Section 41(g) of the Internal Revenue Code shall be taken into account in each subsequent taxable year.

SEC. 2. Section 23609 of the Revenue and Taxation Code is amended to read:

23609. For each income year beginning on or after January 1, 1987, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount determined in accordance with Section 41 of the Internal Revenue Code, except as follows:

(a) For each income year beginning before January 1, 1997, both of the following modifications shall apply:

(1) The reference to "20 percent" in Section 41(a)(1) of the Internal Revenue Code is modified to read "8 percent."

(2) The reference to "20 percent" in Section 41(a)(2) of the Internal Revenue Code is modified to read "12 percent."

(b) For each income year beginning on or after January 1, 1997, both of the following modifications shall apply:

(1) The reference to "20 percent" in Section 41(a)(1) of the Internal Revenue Code is modified to read "11 percent."

(2) The reference to "20 percent" in Section 41(a)(2) of the Internal Revenue Code is modified to read "24 percent."

(c) "Qualified research" and "basic research" shall include only research conducted in California.

(d) The provisions of Section 41(e)(7)(A) of the Internal Revenue Code, shall be modified so that "basic research," for

purposes of this section, includes any basic or applied research including scientific inquiry or original investigation for the advancement of scientific or engineering knowledge or the improved effectiveness of commercial products, except that the term does not include any of the following:

(1) Basic research conducted outside California.

(2) Basic research in the social sciences, arts, or humanities.

(3) Basic research for the purpose of improving a commercial product if the improvements relate to style, taste, cosmetic, or seasonal design factors.

(4) Any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (including oil and gas).

(e) (1) In the case of a taxpayer engaged in any biopharmaceutical research activities that are described in codes 2833 to 2836, inclusive, or any research activities that are described in codes 3826, 3829, or 3841 to 3845, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, or any other biotechnology research and development activities, the provisions of Section 41(e)(6) of the Internal Revenue Code shall be modified to include both of the following:

(A) A qualified organization as described in Section 170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an institution of higher education as described in Section 3304(f) of the Internal Revenue Code.

(B) A charitable research hospital owned by an organization that is described in Section 501(c)(3) of the Internal Revenue Code, is exempt from taxation under Section 501(a) of the Internal Revenue Code, is not a private foundation, is designated a "specialized laboratory cancer center," and has received Clinical Cancer Research Center status from the National Cancer Institute.

(2) For purposes of this subdivision:

(A) "Biopharmaceutical research activities" means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities that make use of chemical compounds to produce commercial products.

(B) "Other biotechnology research and development activities" means research and development activities consisting of the application of recombinant DNA technology to produce commercial products, as well as research and development activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(f) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(g) For each income year beginning on or after January 1, 1998, the reference to "Section 501(a)" in Section 41(b)(3)(C) of the Internal Revenue Code, relating to contract research expenses, is modified to read "this part or Part 10 (commencing with Section 17001)."

(h) (1) For each income year beginning on or after January 1, 1998:

(A) The reference to "1.65 percent" in Section 41(c)(4)(A)(i) of the Internal Revenue Code is modified to read "ninety-one hundredths of one percent."

(B) The reference to "2.2 percent" in Section 41(c)(4)(A)(ii) of the Internal Revenue Code is modified to read "one and twenty-one hundredths percent."

(C) The reference to "2.75 percent" in Section 41(c)(4)(A)(iii) of the Internal Revenue Code is modified to read "one and fifty-one hundredths percent."

(2) Section 41(c)(4)(B) shall not apply and in lieu thereof an election under Section 41(c)(4)(A) of the Internal Revenue Code may be made for any income year of the taxpayer beginning on or after January 1, 1998. That election shall apply to the income year for which made and all succeeding income years unless revoked with the consent of the Franchise Tax Board.

(3) Section 41(c)(5) of the Internal Revenue Code, relating to gross receipts, is modified to take into account only those gross receipts from the sale of property held primarily for sale to customers in the ordinary course of the taxpayer's trade or business that is delivered or shipped to a purchaser within this state, regardless of f.o.b. point or any other condition of the sale.

(i) Section 41(h) of the Internal Revenue Code, relating to termination, shall not apply.

(j) Section 41(g) of the Internal Revenue Code, relating to special rule for passthrough of credit, is modified by each of the following:

(1) The last sentence shall not apply.

(2) If the amount determined under Section 41(a) of the Internal Revenue Code for any income year exceeds the limitation of Section 41(g) of the Internal Revenue Code, that amount may be carried over to other income years under the rules of subdivision (f), except that the limitation of Section 41(g) of the Internal Revenue Code shall be taken into account in each subsequent income year.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect,

however, the provisions of this act shall be operative for taxable and income years beginning on or after January 1, 1998.

CHAPTER 614

An act to amend Section 19271 of, and to add Section 19274 to, the Revenue and Taxation Code, relating to child support.

[Approved by Governor October 2, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Section 19271 of the Revenue and Taxation Code is amended to read:

19271. (a) (1) A county district attorney enforcing child support obligations pursuant to Section 11475.1 of the Welfare and Institutions Code shall refer child support delinquencies to the Franchise Tax Board for collection. For purposes of this article, a "child support delinquency" shall mean a child support obligation that may include or be limited to interest, fees, or penalties, on which the payment then due has not been received following the expiration of 90 days from the date payment is due. If there is a child support delinquency at the time the case is opened by the district attorney, the case shall be referred to the Franchise Tax Board no later than 90 days after receipt of the case by the district attorney. A county district attorney may also refer to the Franchise Tax Board a child support obligation that is 30 days or more past due, and any of these obligations shall be collected as if they were delinquencies otherwise described in this subdivision.

(2) Referrals shall be transmitted in the form and manner prescribed by the Franchise Tax Board.

(3) In order to manage the growth in the number of referrals that it may receive, the Franchise Tax Board may phase in the referrals as administratively necessary.

(4) At least 20 days prior to the date that the Franchise Tax Board commences collection action under this article, the Franchise Tax Board shall mail notice of the amount due to the obligated parent at the last known address for payment and advise that person that failure to pay will result in collection action. If the obligated parent disagrees with the amount due, the obligated parent shall be instructed to contact the county district attorney.

(b) (1) (A) Except as otherwise provided in subparagraph (B), when a delinquency is referred to the Franchise Tax Board pursuant to subdivision (a), the amount of the child support delinquency shall be collected from obligated parents by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent

personal income tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes. Any law providing for the collection of a delinquent personal income tax liability shall apply to delinquencies referred under this article in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that any provision is either inconsistent with a provision of this article or is not relevant to this article.

(B) When a delinquency is referred to the Franchise Tax Board pursuant to subdivision (a), or at any time thereafter if the obligated parent owes a delinquent personal income tax liability, the Franchise Tax Board shall not engage in, or shall cease, any involuntary collection action to collect the delinquency referred under this article, until the delinquent personal income tax liability is paid in full. In the event the obligated parent owes a delinquent personal income tax liability when a delinquency is referred, the Franchise Tax Board shall mail the notice specified in paragraph (4) of subdivision (a). At any time thereafter, the Franchise Tax Board may mail any other notice to the obligated parent for voluntary payment as the Franchise Tax Board deems necessary. However, the Franchise Tax Board may engage in the collection of a delinquency referred pursuant to subdivision (a) under either of the following circumstances:

(i) The delinquent personal income tax liability is discharged from accountability pursuant to Section 13940 of the Government Code.

(ii) The obligor has entered into an installment payment agreement for the delinquent personal income tax liability and is in compliance with that agreement, and the Franchise Tax Board determines that collection of the delinquency referred pursuant to subdivision (a) would not jeopardize payments under the installment agreement.

(C) For purposes of subparagraph (B):

(i) "Involuntary collection action" means those actions authorized by Section 18670, 18670.5, 18671, or 19264, by Article 3 (commencing with Section 19231), or by Chapter 5 (commencing with Section 706.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(ii) "Delinquent personal income tax liability" means any taxes, additions to tax, penalties, interest, fees, or other related amounts due and payable under Part 10 (commencing with Section 17001) or this part.

(iii) "Voluntary payment" means any payment made by obligated parents in response to the notice specified in paragraph (4) of subdivision (a) or any other notice for voluntary payment mailed by the Franchise Tax Board.

(2) Any compensation, fee, commission, expense, or any other fee for service incurred by the Franchise Tax Board in the collection of a child support delinquency authorized under this article shall not be an obligation of, or collected from, the obligated parent. A referred child support delinquency shall be final and due and payable to the State of California upon written notice to the obligated parent by the Franchise Tax Board.

(3) For purposes of administering this article:

(A) This chapter and Chapter 7 (commencing with Section 19501) shall apply, except as otherwise provided by this article.

(B) Any services, information, or enforcement remedies available to a district attorney or the Title IV-D agency in collecting support delinquencies or locating absent or noncustodial parents shall be available to the Franchise Tax Board for purposes of collecting child support delinquencies under this article, including, but not limited to, any information that may be disclosed by the Franchise Tax Board to the California Parent Locator Service under Section 19548.

(C) A request by the Franchise Tax Board for information from a financial institution shall be treated in the same manner and to the same extent as a request for information from a district attorney referring to a support order pursuant to Section 11475.1 of the Welfare and Institutions Code for purposes of Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code (relating to governmental access to financial records), notwithstanding any other provision of law which is inconsistent or contrary to this paragraph.

(D) "Earnings" may include the items described in Section 5206 of the Family Code.

(E) The amount to be withheld in an order and levy to collect child support delinquencies under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure is the amount required to be withheld pursuant to an earnings withholding order for support under Section 706.052 of the Code of Civil Procedure.

(c) Interest on the delinquency shall be computed pursuant to Section 685.010 of the Code of Civil Procedure.

(d) In the event the collection action would cause undue financial hardship to the obligated parent, would threaten the health or welfare of the obligated parent or his or her family, or would cause undue irreparable loss to the obligated parent, the obligated parent may notify the Franchise Tax Board which shall, upon being notified, refer the obligated parent to the referring county district attorney, unless the Franchise Tax Board is directed otherwise by the county district attorney for purposes of more effectively administering this article.

(e) (1) In no event shall a collection under this article be construed to be a payment of income taxes imposed under this part.

(2) In the event an obligated parent overpays a liability imposed under this part, the overpayment shall not be credited against any delinquency collected pursuant to this article. In the event an overpayment of a liability imposed under this part is offset and distributed to a referring county district attorney pursuant to Sections 12419.3 and 12419.5 of the Government Code or Section 708.740 of the Code of Civil Procedure, and thereby reduces the amount of the referred delinquency, the referring county district attorney shall immediately notify the Franchise Tax Board of that reduction, unless otherwise directed for purposes of more effectively administering this article.

(3) In no event shall the district attorney refer or the Franchise Tax Board collect under this article any delinquency if both of the following circumstances exist:

(A) A court has ordered an obligated parent to make scheduled payments on a child support arrearages obligation.

(B) The obligated parent is in compliance with the order.

(4) A child support delinquency need not be referred to the Franchise Tax Board pursuant to this article if an earnings assignment order or a notice of assignment has been served on the obligated parent's employer and court-ordered support is being paid pursuant to the earnings assignment order or the notice of assignment or at least 50 percent of the obligated parent's earnings are being withheld for support.

(5) A child support delinquency need not be referred to the Franchise Tax Board for collection if a jurisdiction outside this state is enforcing the support order.

(f) Except as otherwise provided in this article, any child support delinquency referred to the Franchise Tax Board pursuant to this article shall be treated as a child support delinquency for all other purposes, and any collection action by the county district attorney or the Franchise Tax Board with respect to any delinquency referred pursuant to this article shall have the same priority against attachment, execution, assignment, or other collection action as is provided by any other provision of state law.

(g) For purposes of this article, "child support" means support of a child, spouse, or family as provided in Section 150 of the Family Code.

(h) Nothing in this article shall be construed to modify the tax intercept provisions of Article 8 (commencing with Section 708.710) of Chapter 6 of Division 2 of Part 2 of the Code of Civil Procedure.

(i) Except as otherwise specifically provided in subparagraph (B) of paragraph (1) of subdivision (b), the child support collection activities authorized by this article shall not interfere with the primary mission of the Franchise Tax Board to fairly and efficiently administer the Revenue and Taxation Code for which it is responsible.

(j) Information disclosed to the Franchise Tax Board shall be considered information that may be disclosed by the Franchise Tax Board under the authority of Section 19548 and may be disseminated by the Franchise Tax Board accordingly for the purposes specified in Sections 11478 and 11478.5 of the Welfare and Institutions Code (in accordance with, and to the extent permitted by, Section 11478.1 of the Welfare and Institutions Code and any other state or federal law).

(k) A county may apply to the State Department of Social Services for an exemption from subdivision (a). The State Department of Social Services shall grant an exemption only if the county has a program for collecting delinquent child support, including hardware and software, that is similar or identical to the technology used by the Franchise Tax Board in implementing its child support collections program and the county program was in operation as of April 1, 1997.

SEC. 2. Section 19274 is added to the Revenue and Taxation Code, to read:

19274. The county district attorney may refer to the Franchise Tax Board cases in which the social security number of the noncustodial parent is unknown. The Franchise Tax Board shall search its records to obtain the noncustodial parent's social security number and furnish this information to the county district attorney to assist in the establishment or enforcement of a child support order. For purposes of administering this section, the Franchise Tax Board may use any services or information available for tax enforcement purposes, or available to a district attorney or the Title IV-D agency in collecting or enforcing child support, or in locating absent or noncustodial parents.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

SEC. 4. This act shall become operative only if Assembly Bill 573 and Senate Bill 247 of the 1997–98 Regular Session are enacted and become effective on or before January 1, 1998.

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CHAPTER 615

An act to amend Section 6385 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 2, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Section 6385 of the Revenue and Taxation Code, as amended by Section 1.5 of Chapter 905 of the Statutes of 1992, is amended to read:

6385. (a) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than fuel and petroleum products, to a common carrier, shipped by the seller via the purchasing carrier's facilities under a bill of lading whether the freight is paid in advance, or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier.

(b) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than aircraft fuel and petroleum products, purchased by a foreign air carrier and transported by the foreign air carrier's facilities to a foreign destination for use by the air carrier in the conduct of its business as a common carrier by air of persons or property. To qualify for this exemption, the foreign air carrier shall furnish to the seller a certificate in writing that the property shall be transported and used in the manner required in this subdivision. The certificate shall be substantially in the form prescribed by the board. A seller is not liable for the sales tax if the seller accepts the certificate in good faith. If the seller does not have the certificate at the time the board requests the seller to submit the certificate to the board, the seller shall be given a reasonable time to request the foreign air carrier to provide the seller with the certificate. The foreign air carrier shall maintain records in this state, such as a copy of a bill of lading, and air waybill or cargo manifest, documenting its transportation of the tangible personal property to a foreign destination.

(c) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of fuel and petroleum products to a water common carrier, for immediate shipment outside this state for consumption in the conduct of its business as a common carrier after the first out-of-state destination. To qualify for the exemption the common carrier shall furnish to the seller an exemption certificate in writing stating the quantity of fuel and

petroleum products claimed as exempt which is to be consumed after reaching the first out-of-state destination. That certificate shall bear the purchaser's valid seller's permit number or valid fuel exemption registration number and shall be substantially in the form prescribed by the board. Acceptance in good faith of that certificate shall relieve the seller from liability for the sales tax.

(d) "First out-of-state destination," as used in this section, means the first point reached outside this state by a common carrier in the conduct of its business as a common carrier at which cargo or passengers are loaded or discharged, cargo containers are added or removed, fuel is bunkered, or docking fees are charged.

"First out-of-state destination," as used in this section, also includes the entry point of the Panama Canal when the carrier is only transiting the canal in the conduct of its business as a common carrier.

(e) "Common carrier," as used in this section, with respect to water transportation, shall be deemed to include any vessel engaged, for compensation, in transporting persons or property in interstate or foreign commerce.

(f) "Foreign air carrier," as used in this section, means a foreign air carrier as defined in Section 1301 of Title 49 of the United States Code.

(g) "Immediate shipment," as used in this section, means that the delivery of the fuel and petroleum products by the seller is directly into a ship for transportation outside this state and not for storage by the purchaser or any third party.

(h) Any common carrier claiming exemption under subdivision (c) who is not required to hold a valid seller's permit shall be required to register with the board and obtain a fuel exemption registration number and shall be required to file returns as the board may prescribe if either the board notifies the carrier that returns must be filed or the carrier is liable for taxes based upon consumption of fuel erroneously claimed as exempt under this section. A common carrier required to hold a fuel exemption registration number shall be subject to all applicable provisions of this part, Part 1.5 (commencing with Section 7200), and Part 1.6 (commencing with Section 7251).

(i) A common carrier claiming an exemption under subdivision (c), upon request, shall make available to the board records, including, but not limited to, a copy of a log abstract or a cargo manifest, documenting its transportation of the fuel or petroleum product to an out-of-state destination and the amount claimed as exempt. If the carrier fails to provide these records upon request, the board may revoke the carrier's fuel exemption registration number.

(j) The board may require any carrier claiming an exemption under this section and required to obtain a fuel exemption registration number to place with it that security as the board may determine pursuant to Section 6701.

(k) Pursuant to subdivisions (a), (b), and (c), any use of the property by the purchasing carrier, other than that incident to the

delivery of the property to the carrier and the transportation of the property by the carrier to the first out-of-state destination and subsequent use in the conduct of its business as a common carrier, or a failure of the carrier to document its transporting the property to the first out-of-state destination, shall subject the carrier to liability for payment of sales tax as if it were a retailer making a retail sale of the property at the time of that use or failure, and the sales price of the property to it shall be deemed to be the gross receipts from the retail sale.

(*l*) This section shall remain in effect only until January 1, 2003, and as of that date is repealed.

SEC. 2. Section 6385 of the Revenue and Taxation Code, as added by Section 1.6 of Chapter 905 of the Statutes of 1992, is amended to read:

6385. (a) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than fuel and petroleum products, to a common carrier, shipped by the seller via the purchasing carrier's facilities under a bill of lading whether the freight is paid in advance, or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier.

(b) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than aircraft fuel and petroleum products, purchased by a foreign air carrier and transported by the foreign air carrier's facilities to a foreign destination for use by the air carrier in the conduct of its business as a common carrier by air of persons or property. To qualify for this exemption, the foreign air carrier shall furnish to the seller a certificate in writing that the property shall be transported and used in the manner required in this subdivision. The certificate shall be substantially in the form prescribed by the board. A seller is not liable for the sales tax if the seller accepts the certificate in good faith. If the seller does not have the certificate at the time the board requests the seller to submit the certificate to the board, the seller shall be given a reasonable time to request the foreign air carrier to provide the seller with the certificate. The foreign air carrier shall maintain records in this state, such as a copy of a bill of lading, and air waybill or cargo manifest, documenting its transportation of the tangible personal property to a foreign destination.

(c) "Common carrier," as used in this section, with respect to water transportation, shall be deemed to include any vessel engaged, for compensation, in transporting persons or property in interstate or foreign commerce.

(d) "Foreign air carrier," as used in this section, means a foreign air carrier as defined in Section 1301 of Title 49 of the United States Code.

(e) Pursuant to subdivisions (a) and (b), any use of the property by the purchasing carrier, other than that incident to the delivery of the property to the carrier and the transportation of the property by the carrier to an out-of-state destination and subsequent use in the conduct of its business as a common carrier, or a failure of the carrier to document its transporting the property to an out-of-state destination, shall subject the carrier to liability for payment of sales tax as if it were a retailer making a retail sale of the property at the time of that use or failure, and the sales price of the property to it shall be deemed to be the gross receipts from the retail sale.

(f) This section shall become operative on January 1, 2003.

SEC. 3. The Legislative Analyst's Office shall report to the Legislature on or before January 1, 2001, on the effect on bunker fuel sales of the sales tax exemption for the sale of fuel and petroleum products to a water common carrier provided by Section 6385 of the Revenue and Taxation Code for the period beginning on and after January 1, 1993, as compared to the period beginning on July 1, 1991, and ending January 1, 1993, when no exemption was allowed for those sales.

SEC. 4. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 616

An act to add Chapter 8 (commencing with Section 51298) to Part 1 of Division 1 of Title 5 of the Government Code, relating to local government.

[Approved by Governor October 2, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Chapter 8 (commencing with Section 51298) is added to Part 1 of Division 1 of Title 5 of the Government Code, to read:

CHAPTER 8. CAPITAL INVESTMENT INCENTIVE PROGRAM

51298. It is the intent of the Legislature in enacting this chapter to provide local governments opportunities to attract large manufacturing facilities to invest in their communities and to encourage industries such as high technology, aerospace, automotive, biotechnology, software, environmental sources, and others to locate and invest in those facilities in California.

(a) Commencing in the 1998–99 fiscal year, the governing body of a county, city and county, or city, may, by means of an ordinance or resolution approved by a majority of its entire membership, elect to establish a capital investment incentive program. In any county, city and county, or city in which the governing body has so elected, the county, city and county, or city shall, upon the approval by a majority of the entire membership of its governing body of a written request therefor, pay a capital investment incentive amount to the proponent of a qualified manufacturing facility for up to 15 consecutive fiscal years. A request for the payment of capital investment incentive amounts shall be filed by a proponent in writing with the governing body of an electing county, city and county, or city in the time and manner specified in procedures adopted by that governing body. In the case in which the governing body of an electing county, city and county, or city approves a request for the payment of capital investment incentive amounts, both of the following conditions shall apply:

(1) The consecutive fiscal years during which a capital investment incentive amount is to be paid shall commence with the first fiscal year commencing after the date upon which the qualified manufacturing facility is certified for occupancy or, if no certification is issued, the first fiscal year commencing after the date upon which the qualified manufacturing facility commences operation.

(2) In accordance with paragraph (4) of subdivision (d), the annual payment to a proponent of each capital investment incentive amount shall be contingent upon the proponent's payment of a community services fee.

(b) For purposes of this section:

(1) "Qualified manufacturing facility" means a proposed manufacturing facility that meets all of the following criteria:

(A) The proponent's initial investment in that facility, in real and personal property, necessary for the full and normal operation of that facility, made pursuant to the capital investment incentive program, that comprises any portion of that facility or has its situs at that facility, exceeds one hundred fifty million dollars ($150,000,000). Compliance with this subparagraph shall be certified by the Trade and Commerce Agency upon the agency's approval of a proponent's application for certification of a qualified manufacturing facility. An application for certification shall be submitted by a proponent to the agency in writing in the time and manner as specified by the agency.

(B) The facility is to be located within the jurisdiction of the electing county, city and county, or city to which the request is made for payment of capital investment incentive amounts.

(C) The facility is operated by a business described in Codes 3500 to 3899, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, however, "January 1, 1997," shall be substituted for "January 1, 1994," in each place in which it appears.

(D) The proponent is either currently engaged in commercial production or engaged in the perfection of the manufacturing process, or the perfection of a product intended to be manufactured.

(2) "Proponent" means a party that meets all of the following criteria:

(A) The party is named in the application to the county, city and county, or city within which the qualified manufacturing facility would be located for a permit to construct a qualified manufacturing facility.

(B) The party will be the fee owner of the qualified manufacturing facility upon the completion of that facility. Notwithstanding the previous sentence, the party may enter into a sale-leaseback transaction and nevertheless be considered the proponent.

(C) If a proponent that is receiving capital investment incentive amounts subsequently leases the subject qualified manufacturing facility to another party, the lease may provide for the payment to that lessee of any portion of a capital investment incentive amount. Any lessee receiving any portion of a capital investment incentive amount shall also be considered a proponent for the purposes of subdivision (d).

(3) "Capital investment incentive amount" means, with respect to a qualified manufacturing facility for a relevant fiscal year, an amount up to or equal to the amount of ad valorem property tax revenue derived by the participating local agency from the taxation of that portion of the total assessed value of that real and personal property described in subparagraph (A) of paragraph (1) of subdivision (b) that is in excess of one hundred fifty million dollars ($150,000,000).

(4) "Manufacturing" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(c) A city, special district, or school district may, upon the approval by a majority of the entire membership of its governing body, pay to the county, city and county, or city an amount equal to the amount of ad valorem property tax revenue allocated to that city,

special district, or school district, but not the actual allocation, derived from the taxation of that portion of the total assessed value of that real and personal property described in subparagraph (A) of paragraph (1) of subdivision (b) that is in excess of one hundred fifty million dollars ($150,000,000).

(d) A proponent, whose request for the payment of capital investment incentive amounts is approved by an electing county, city and county, or city shall enter into a community services agreement with that county, city and county, or city that includes, but is not limited to, all of the following provisions:

(1) A provision requiring that a community services fee be remitted by the proponent to the county, city and county, or city in each fiscal year subject to the agreement, in an amount that is equal to 25 percent of the capital investment incentive amount calculated for that proponent for that fiscal year, except that in no fiscal year shall the amount of the community services fee exceed two million dollars ($2,000,000).

(2) A provision specifying the dates in each relevant fiscal year upon which payment of the community services fee is due and delinquent, and the rate of interest to be charged to a proponent for any delinquent portion of the community services fee amount.

(3) A provision specifying the procedures and rules for the determination of underpayments or overpayments of a community services fee, for the appeal of determinations of any underpayment, and for the refunding or crediting of any overpayment.

(4) A provision specifying that a proponent is ineligible to receive a capital investment incentive amount if that proponent is currently delinquent in the payment of any portion of a community services fee amount, if the qualified manufacturing facility is constructed in a manner materially different from the facility as described in building permit application materials, or if the facility is no longer operated as a qualified manufacturing facility meeting the requirements of paragraph (1) of subdivision (b). If a proponent becomes ineligible to receive a capital investment incentive amount as a result of an agreement provision included pursuant to this subparagraph, the running of the number of consecutive fiscal years specified in an agreement made pursuant to subdivision (a) is not tolled during the period in which the proponent is ineligible.

(5) A provision that sets forth a job creation plan with respect to the relevant qualified manufacturing facility. The plan shall specify the number of jobs to be created by that facility, and the types of jobs and compensation ranges to be created thereby. The plan shall also specify that for the entire term of the community services agreement that both of the following shall apply:

(A) All of the employees working at the qualified manufacturing facility shall be covered by an employer sponsored health benefits plan.

(B) The average weekly wage, exclusive of overtime, paid to all of the employees working at the qualified manufacturing facility, who are not management or supervisory employees, shall be not less than the state average weekly wage.

For the purpose of this subdivision, "state average weekly wage" means the average weekly wage paid by employers to employees covered by unemployment insurance, as reported to the Employment Development Department for the four calendar quarters ending June 30 of the preceding calendar year.

(6) (A) In the case in which the proponent fails to operate the qualified manufacturing facility as required by the community services agreement, a provision that requires the recapture of any portion of any capital investment incentive amounts previously paid to the proponent equal to the lesser of the following:

(i) All of the capital investment incentive amounts paid to the proponent, less all of the community services fees received from the proponent, and less any capital investment incentive amounts previously recaptured.

(ii) The last capital investment incentive amount paid to the proponent, less the last community services fee received from the proponent, multiplied by 40 percent of the number of years remaining in the community services agreement, but not to exceed 10 years, and less any capital investment incentive amounts previously recaptured.

(B) If the proponent fails to operate the qualified manufacturing facility as required by the community services agreement, the county, city and county, or city may, upon a finding that good cause exists, waive any portion of the recapture of any capital investment incentive amount due under this subdivision. For the purpose of this subdivision, good cause includes, but is not limited to, the following:

(i) The proponent has sold or leased the property to a person who has entered into an agreement with the county, city and county, or city to assume all of the responsibilities of the proponent under the community services agreement.

(ii) The qualified manufacturing facility has been rendered inoperable and beyond repair as a result of an act of God.

(C) For purposes of this subdivision, failure to operate a qualified manufacturing facility as required by the community services agreement includes, but is not limited to, failure to establish the number of jobs specified in the jobs creation plan created pursuant to paragraph (5).

(e) (1) Each county, city and county, or city that elects to establish a capital investment incentive program shall notify the Trade and Commerce Agency of its election to do so no later than June 30th of the fiscal year in which the election was made.

(2) In addition to the information required to be reported pursuant to paragraph (1), each county, city and county, or city that has elected to establish a capital investment incentive program shall

notify the Trade and Commerce Agency each fiscal year no later than June 30th of the amount of any capital investment incentive payments made and the proponent of the qualified manufacturing facility to whom the payments were made during that fiscal year.

(3) The Trade and Commerce Agency shall compile the information submitted by each county, city and county, and city pursuant to paragraphs (1) and (2) and submit a report to the Legislature containing this information no later than October 1, every two years commencing October 1, 2000.

CHAPTER 617

An act to amend Sections 1506.5, 1520.3, 1522, 1534, 1558, 1568.065, 1568.09, 1569.16, 1569.17, 1569.58, 1596.851, 1596.871, and 1596.8897 of, to amend and renumber Section 1568.066 of, to add Sections 1558.1, 1568.093, 1569.59, and 1596.8898 to, and to repeal Section 1568.092 of, the Health and Safety Code, relating to care facilities.

[Approved by Governor October 2, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Section 1506.5 of the Health and Safety Code is amended to read:

1506.5. (a) Foster family agencies shall not use foster family homes licensed by a county without the approval of the licensing county. When approval is granted, a written agreement between the foster family agency and the county shall specify the nature of administrative control and case management responsibility and the nature and number of the children to be served in the home.

(b) Before a foster family agency may use a licensed foster family home it shall review and, with the exception of a new fingerprint clearance, qualify the home in accordance with Section 1506.

(c) When approval is given, and for the duration of the agreement permitting the foster family agency use of its licensed foster family home, no child shall be placed in that home except through the foster family agency.

(d) Nothing in this section shall transfer or eliminate the responsibility of the placing agency for the care, custody, or control of the child. Nothing in this section shall relieve a foster family agency of its responsibilities for or on behalf of a child placed with it.

(e) (1) If an application to a foster family agency for a certificate of approval indicates, or the department determines during the application review process, that the applicant previously was issued a license under this chapter or under Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter

3.01 (commencing with Section 1568.01), Chapter 3.2 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) and the prior license was revoked within the preceding two years, the foster family agency shall cease any further review of the application until two years have elapsed from the date of the revocation.

(2) If an application to a foster family agency for a certificate of approval indicates, or the department determines during the application review process, that the applicant previously was issued a certificate of approval by a foster family agency that was revoked by the department pursuant to subdivision (b) of Section 1534 within the preceding two years, the foster family agency shall cease any further review of the application until two years have elapsed from the date of the revocation.

(3) If an application to a foster family agency for a certificate of approval indicates, or the department determines during the application review process, that the applicant was excluded from a facility licensed by the department pursuant to Section 1558, 1568.092, 1569.58, or 1596.8897, the foster family agency shall cease any further review of the application unless the excluded person has been reinstated pursuant to Section 11522 of the Government Code by the department.

(4) The cessation of review shall not constitute a denial of the application for purposes of subdivision (b) of Section 1534 or any other law.

(f) (1) If an application to a foster family agency for a certificate of approval indicates, or the department determines during the application review process, that the applicant had previously applied for a license under any of the chapters listed in paragraph (1) of subdivision (e) and the application was denied within the last year, the foster family agency shall cease further review of the application as follows:

(A) In cases where the applicant petitioned for a hearing, the foster family agency shall cease further review of the application until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(B) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the foster family agency shall cease further review of the application until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(2) The foster family agency may continue to review the application if the department has determined that the reasons for the denial of the application were due to circumstances and a condition that either have been corrected or are no longer in existence.

(3) The cessation of review shall not constitute a denial of the application for purposes of subdivision (b) of Section 1534 or any other law.

(g) (1) If an application to a foster family agency for a certificate of approval indicates, or the department determines during the application review process, that the applicant had previously applied for a certificate of approval with a foster family agency and the department ordered the foster family agency to deny the application pursuant to subdivision (b) of Section 1534, the foster family agency shall cease further review of the application as follows:

(A) In cases where the applicant petitioned for a hearing, the foster family agency shall cease further review of the application until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(B) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the foster family agency shall cease further review of the application until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(2) The foster family agency may continue to review the application if the department has determined that the reasons for the denial of the application were due to circumstances and conditions that either have been corrected or are no longer in existence.

(3) The cessation of review shall not constitute a denial of the application for purposes of subdivision (b) of Section 1534 or any other law.

SEC. 2. Section 1520.3 of the Health and Safety Code is amended to read:

1520.3. (a) (1) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant previously was issued a license under this chapter or under Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter 3.01 (commencing with Section 1568.01), Chapter 3.3 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) and the prior license was revoked within the preceding two years, the department shall cease any further review of the application until two years shall have elapsed from the date of the revocation. The cessation of review shall not constitute a denial of the application for purposes of Section 1526 or any other provision of law.

(2) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant previously was issued a certificate of approval by a foster family agency that was revoked by the department pursuant to subdivision (b) of Section 1534 within the preceding two years, the

department shall cease any further review of the application until two years shall have elapsed from the date of the revocation.

(3) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant was excluded from a facility licensed by the department pursuant to Sections 1558, 1568.092, 1569.58, or 1596.8897, the department shall cease any further review of the application unless the excluded individual has been reinstated pursuant to Section 11522 of the Government Code by the department.

(b) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant had previously applied for a license under any of the chapters listed in paragraph (1) of subdivision (a) and the application was denied within the last year, the department shall cease further review of the application as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall cease further review of the application until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall cease further review of the application until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(3) The department may continue to review the application if it has determined that the reasons for the denial of the application were due to circumstances and conditions which either have been corrected or are no longer in existence.

(c) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant had previously applied for a certificate of approval with a foster family agency and the department ordered the foster family agency to deny the application pursuant to subdivision (b) of Section 1534, the department shall cease further review of the application as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall cease further review of the application until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall cease further review of the application until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(3) The department may continue to review the application if it has determined that the reasons for the denial of the application were due to circumstances and conditions that either have been corrected or are no longer in existence.

(d) The cessation of review shall not constitute a denial of the application for purposes of Section 1526 or any other law.

SEC. 3. Section 1522 of the Health and Safety Code is amended to read:

1522. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a community care facility, foster family home, or a certified family home. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety.

(a) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, of any of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code. No fee shall be charged by the Department of Justice or the State Department of Social Services for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section. The following shall apply to the criminal record information:

(1) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(2) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services shall cease processing the application until the conclusion of the trial.

(3) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(4) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (g).

(b) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff.

(2) Any person, other than a client, residing in the facility.

(3) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene.

(4) Any staff person or employee who has frequent and routine contact with the clients. In determining who has frequent contact, any volunteer who is in the facility shall be exempt unless the volunteer is used to replace or supplement staff in providing direct care and supervision of clients. In determining who has routine contact, staff and employees under direct onsite supervision and who are not providing direct care and supervision or who have only occasional or intermittent contact with clients shall be exempt.

(5) Except for staff members of social rehabilitation facilities serving minors with alcohol or drug abuse problems, staff members of social rehabilitation facilities, other than those specified in paragraphs (1) and (2), are exempt from fingerprinting requirements.

(6) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(7) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice not later than four calendar days following employment, residence, or initial presence in the community care facility. These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints. Fingerprints not submitted to the Department of Justice, as required in this

section, shall result in the citation of a deficiency and the fingerprints shall then be submitted to the State Department of Social Services for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 15 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 15 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, or 273d or subdivision (a) or (b) of Section 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (g). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (2) seek an exemption pursuant to subdivision (g). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1550.

(4) The department may issue an exemption on its own motion pursuant to subdivision (g) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulation to

establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (g). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the State Department of Social Services or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code or arrested for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons. No fee shall be charged by the Department of Justice or the State Department of Social Services for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant. The following shall apply to the criminal record information:

(A) If the applicant or other persons specified in subdivision (b) have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied.

(B) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services or other approving authority shall cease processing the application until the conclusion of the trial.

(C) For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

(2) Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions or arrests for any crime against a child, spousal or cohabitant abuse or, any crime for which the department cannot grant an exemption if the person was convicted and shall submit these fingerprints to the licensing agency or other approving authority.

(3) The foster family agency shall obtain fingerprints from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services.

(4) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(5) If the State Department of Social Services finds after licensure or the granting of the certificate of approval that the licensee, certified foster parent, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license or certificate of approval may be revoked by the department or the foster family agency, whichever is applicable, unless the director grants an exemption pursuant to subdivision (g). A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by paragraph (3) of subdivision (c) shall be grounds for disciplining the licensee pursuant to Section 1550.

(e) The State Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the State Department of Social Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea

of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for a license, special permit, or certificate of approval as specified in paragraphs (4) and (5) of subdivision (d), or for employment, residence, or presence in a community care facility as specified in paragraphs (3), (4), and (5) of subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director may grant an exemption if the employee or prospective employee, who was convicted of a crime against an individual prescribed in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, has been rehabilitated as provided in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1558.

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(i) The full criminal record obtained for purposes of this section may be used by the department or by a licensed adoption agency as a clearance required for adoption purposes.

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(k) (1) In order to expedite the current criminal record clearance and fingerprint process of the Department of Justice pursuant to subdivisions (a) and (c), the Department of Justice shall complete work on all of its current backlog of criminal records clearances for community care facilities licensed by the State Department of Social Services by July 1, 1995.

(2) Effective January 1, 1995, the Department of Justice shall complete all new requests for criminal record clearances for community care facilities within 30 days of receipt.

(3) The Department of Justice shall coordinate with the State Department of Social Services to establish and implement an automated live-scan processing system for fingerprints in two district offices of the Community Care Licensing Division of the State Department of Social Services by July 1, 1995. These live-scan processing units shall be connected to the main system at the Department of Justice by July 1, 1996, and shall become part of that department's pilot project in accordance with its long-range plan. The State Department of Social Services may charge a fee not to exceed five dollars ($5) or the actual cost of processing a set of live-scan fingerprints.

(4) The Department of Justice shall provide a report to the Assembly Human Services Committee and to the Senate Health and Human Services Committee by July 15, 1995, regarding the completion of backlogged criminal record clearance requests pursuant to paragraph (1) and the progress on implementing the automated live-scan processing system in the two district offices pursuant to paragraph (3). The Department of Justice shall provide a report to the Assembly Human Services Committee and to the

Senate Health and Human Services Committee by April 15, 1996, regarding the progress of the implementation of the statewide CAL-CII system; the number of requests for criminal clearances received pursuant to this section during the previous year; the number of criminal record clearances requested and completed pursuant to this section within a 17-day "expedite" period or within the 30-day period required by paragraph (2); and the number of requests and reasons for delays beyond the 30-day period.

SEC. 4. Section 1534 of the Health and Safety Code is amended to read:

1534. (a) (1) Every licensed community care facility shall be periodically inspected and evaluated for quality of care by a representative or representatives designated by the director. Evaluations shall be conducted at least once per year and as often as necessary to ensure the quality of care being provided.

(2) The department shall notify the community care facility in writing of all deficiencies in its compliance with the provisions of this chapter and the rules and regulations adopted pursuant to this chapter, and shall set a reasonable length of time for compliance by the facility.

(3) Reports on the results of each inspection, evaluation, or consultation shall be kept on file in the department, and all inspection reports, consultation reports, lists of deficiencies, and plans of correction shall be open to public inspection in the county in which the facility is located.

(b) (1) Nothing in this section shall limit the authority of the department to inspect or evaluate a licensed foster family agency, a certified family home, or any aspect of a program where a licensed community care facility is certifying compliance with licensing requirements.

(2) Upon a finding of noncompliance by the department, the department may require a foster family agency to deny or revoke the certificate of approval of a certified family home, or take other action the department may deem necessary for the protection of a child placed with the family home. The family home shall be afforded the due process provided pursuant to this chapter.

(3) If the department requires a foster family agency to deny or revoke the certificate of approval, the department shall serve an order of denial or revocation upon the certified or prospective foster parent and foster family agency that shall notify the certified or prospective foster parent of the basis of the department's action and of the certified or prospective foster parent's right to a hearing.

(4) Within 15 days after the department serves an order of denial or revocation, the certified or prospective foster parent may file a written appeal of the department's decision with the department. The department's action shall be final if the certified or prospective foster parent does not file a written appeal within 15 days after the department serves the denial or revocation order.

(5) The department's order of the denial or revocation of the certificate of approval shall remain in effect until the hearing is completed and the director has made a final determination on the merits.

(6) A certified or prospective foster parent who files a written appeal of the department's order with the department pursuant to this section shall, as part of the written request, provide his or her current mailing address. The certified or prospective foster parent shall subsequently notify the department in writing of any change in mailing address, until the hearing process has been completed or terminated.

(7) Hearings held pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. In all proceedings conducted in accordance with this section the standard of proof shall be the preponderance of the evidence.

(8) The department may institute or continue a disciplinary proceeding against a certified or prospective foster parent upon any ground provided by this section, enter an order denying or revoking the certificate of approval, or otherwise take disciplinary action against the certified or prospective foster parent, notwithstanding any resignation, withdrawal of application, surrender of the certificate of approval, or denial or revocation of the certificate of approval by the foster family agency.

(9) A foster family agency's failure to comply with the department's order to deny or revoke the certificate of employment by placing or retaining children in care shall be grounds for disciplining the licensee pursuant to Section 1550.

SEC. 5. Section 1558 of the Health and Safety Code is amended to read:

1558. (a) The department may prohibit a licensee from employing, or continuing the employment of, or allowing in a licensed facility, or allowing contact with clients of a licensed facility by, any employee, prospective employee, or person who is not a client who has:

(1) Violated, or aided or permitted the violation by any other person of, any provisions of this chapter or of any rules or regulations promulgated under this chapter.

(2) Engaged in conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility, or the people of the State of California.

(3) Been denied an exemption to work or to be present in a facility, when that person has been convicted of a crime as defined in Section 1522.

(4) Engaged in any other conduct which would constitute a basis for disciplining a licensee.

(b) The excluded person, the facility, and the licensee shall be given written notice of the basis of the department's action and of the

excluded person's right to a hearing. The notice shall be served either by personal service or by registered mail. Within 15 days after the department serves the notice, the excluded person may file with the department a written request for a hearing. If the excluded person fails to file a written request for a hearing within the prescribed time, the department's action shall be final.

(c) (1) The department may require the immediate exclusion of an employee, prospective employee, or person who is not a client from a facility pending a final decision of the matter, when, in the opinion of the director, the action is necessary to protect residents or clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.

(2) If the department requires the immediate exclusion of an employee, prospective employee, or person who is not a client from a facility, the department shall serve an order of immediate exclusion upon the excluded person which shall notify the excluded person of the basis of the department's action and of the excluded person's right to a hearing.

(3) Within 15 days after the department serves an order of immediate exclusion, the excluded person may file a written request for a hearing with the department. The department's action shall be final if the excluded person does not file a request for a hearing within the prescribed time. The department shall do the following upon receipt of a written request for a hearing:

(A) Within 30 days of receipt of the request for a hearing, serve an accusation upon the excluded person.

(B) Within 60 days of receipt of a notice of defense pursuant to Section 11506 of the Government Code by the employee, prospective employee, or person who is required to obtain a criminal record clearance pursuant to subdivision (b) of Section 1522, conduct a hearing on the accusation.

(4) An order of immediate exclusion of the excluded person from the facility shall remain in effect until the hearing is completed and the director has made a final determination on the merits. However, the order of immediate exclusion shall be deemed vacated if the director fails to make a final determination on the merits within 60 days after the original hearing has been completed.

(d) An excluded person who files a written request for a hearing with the department pursuant to this section shall, as part of the written request, provide his or her current mailing address. The excluded person shall subsequently notify the department in writing of any change in mailing address, until the hearing process has been completed or terminated.

(e) Hearings held pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department.

(f) The department may institute or continue a disciplinary proceeding against an employee, prospective employee, or person who is not a client upon any ground provided by this section, or enter an order prohibiting the excluded person's employment or presence in the facility or otherwise take disciplinary action against the excluded person, notwithstanding any resignation, withdrawal of employment application, or change of duties by the excluded person, or any discharge, failure to hire, or reassignment of the excluded person by the licensee or that the excluded person no longer has contact with clients at the facility.

(g) A licensee's failure to comply with the department's prohibition of employment or presence in the facility shall be grounds for disciplining the licensee pursuant to Section 1550.

(h) (1) (A) In cases where the excluded person petitioned for a hearing, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or from being a certified foster parent for the remainder of the excluded person's life.

(B) The excluded individual may petition for reinstatement one year after the effective date of the decision and order of the department upholding the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the decision and order.

(2) (A) In cases where the department informed the excluded person of his or her right to petition for a hearing and the excluded person did not petition for a hearing, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or a certified foster parent for the remainder of the excluded person's life.

(B) The excluded individual may petition for reinstatement after one year has elapsed from the date of the notification of the exclusion and the right to petition for a hearing by the department upholding the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the exclusion order.

SEC. 6. Section 1558.1 is added to the Health and Safety Code, to read:

1558.1. (a) (1) If the department determines that a person was issued a license under this chapter or under Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter 3.01 (commencing with Section 1568.01), Chapter 3.2 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) and the prior license was revoked within the preceding two years, the department shall exclude the person from any facility licensed by the department pursuant to the chapter.

(2) If the department determines that a person previously was issued a certificate of approval by a foster family agency which was revoked by the department pursuant to subdivision (b) of Section 1534 within the preceding two years, the department shall exclude the person from any facility licensed by the department pursuant to this chapter.

(b) If the department determines that the person had previously applied for a license under any of the chapters listed in paragraph (1) of subdivision (a) and the application was denied within the last year, the department shall exclude the person from any facility licensed by the department pursuant to this chapter and as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall exclude the person from any facility licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall exclude the person from any facility licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(3) The department may determine not to exclude the person from any facility licensed by the department pursuant to this chapter if it has determined that the reasons for the denial of the application were due to circumstances and conditions that either have been corrected or are no longer in existence.

(c) If the department determines that the person had previously applied for a certificate of approval with a foster family agency and the department ordered the foster family agency to deny the application pursuant to subdivision (b) of Section 1534, the department shall exclude the person from any facility licensed by the department pursuant to this chapter and as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall exclude the person from any facility licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall exclude the person from any facility licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(3) The department may determine not to exclude the person from any facility licensed by the department pursuant to this chapter if it has determined that the reasons for the denial of the application

were due to circumstances and conditions that either have been corrected or are no longer in existence.

(d) Exclusion of an individual pursuant to this section shall not be considered an order of exclusion for purposes of Section 1558 or any other law.

SEC. 7. Section 1568.065 of the Health and Safety Code is amended to read:

1568.065. (a) Proceedings for the suspension, revocation, or denial of a license under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all those powers granted by the provisions. In the event of conflict between this chapter and those provisions of the Government Code, this chapter shall prevail.

(b) In all proceedings conducted in accordance with this section, the standard of proof to be applied shall be by the preponderance of the evidence.

(c) If the license is not temporarily suspended pursuant to Section 1568.082, the hearing shall be held within 90 calendar days after receipt of the notice of defense, unless a continuance of the hearing is granted by the department or the administrative law judge. When the matter has been set for hearing, only the administrative law judge may grant a continuance of the hearing. The administrative law judge may, but need not, grant a continuance of the hearing, only upon finding the existence of any of the following:

(1) The death or incapacitating illness of a party, a representative or attorney of a party, a witness to an essential fact, or of the parent, child, or member of the household of that person, when it is not feasible to substitute another representative, attorney, or witness because of the proximity of the hearing date.

(2) Lack of notice of hearing as provided in Section 11509 of the Government Code.

(3) A material change in the status of the case where a change in the parties or pleadings requires postponement, or an executed settlement or stipulated findings of fact obviate the need for hearing. A partial amendment of the pleadings shall not be good cause for continuance to the extent that the unamended portion of the pleadings is ready to be heard.

(4) A stipulation for continuance signed by all parties or their authorized representatives, including, but not limited to, a representative, which is communicated with the request for continuance to the administrative law judge no later than 25 business days before the hearing.

(5) The substitution of the representative or attorney of a party upon showing that the substitution is required.

(6) The unavailability of a party, representative, or attorney of a party, or witness to an essential fact due to a conflicting and required appearance in a judicial matter if when the hearing date was set, the

person did not know and could neither anticipate nor at any time avoid the conflict, and the conflict with request for continuance is immediately communicated to the administrative law judge.

(7) The unavailability of a party, a representative or attorney of a party, or a material witness due to an unavoidable emergency.

(8) Failure by a party to comply with a timely discovery request if the continuance request is made by the party who requested the discovery.

(d) In addition to the witness fees and mileage provided by Section 11450.40 of the Government Code, the department may pay actual, necessary, and reasonable expenses in an amount not to exceed the per diem allowance payable to a nonrepresented state employee on travel status. The department may pay witness expenses pursuant to this section in advance of the hearing.

(e) (1) The withdrawal of an application for a license or a special permit after it has been filed with the department shall not deprive the department of its authority to institute or continue a proceeding against the applicant for the denial of the license or a special permit upon any ground provided by law or to enter an order denying the license or special permit upon any ground provided by law.

(2) The suspension, expiration, or forfeiture by operation of law of a license issued by the department, or its suspension, forfeiture, or cancellation by order of the department or by order of a court of law, or its surrender, shall not deprive the department of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any ground provided by law.

(f) (1) If an application for a license indicates, or the department determines during the application review process, that the applicant previously was issued a license under this chapter or under Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter 3 (commencing with Section 1500), Chapter 3.3 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) and the prior license was revoked within the preceding two years, the department shall cease any further review of the application until two years shall have elapsed from the date of the revocation.

(2) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant previously was issued a certificate of approval by a foster family agency that was revoked by the department pursuant to subdivision (b) of Section 1534 within the preceding two years, the department shall cease any further review of the application until two years have elapsed from the date of the revocation.

(3) If an application for a license or special permit indicates, or the department determines during the application review process, that

the applicant was excluded from a facility licensed by the department pursuant to Section 1558, 1568.092, 1569.58, or 1596.8897, the department shall cease any further review of the application unless the excluded individual has been reinstated pursuant to Section 11522 of the Government Code by the department.

(4) If an application for a license indicates, or the department determines during the application review process, that the applicant had previously applied for a license under any of the chapters listed in paragraph (1) and the application was denied within the last year, the department shall cease further review of the application as follows:

(A) In cases where the applicant petitioned for a hearing, the department shall cease further review of the application until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(B) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall cease further review of the application until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(C) The department may continue to review the application if it has determined that the reasons for the denial of the application were due to circumstances and conditions which either have been corrected or are no longer in existence.

(5) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant had previously applied for a certificate of approval with a foster family agency and the department ordered the foster family agency to deny the application pursuant to subdivision (b) of Section 1534, the department shall cease further review of the application as follows:

(A) In cases where the applicant petitioned for a hearing, the department shall cease further review of the application until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(B) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall cease further review of the application until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(C) The department may continue to review the application if it has determined that the reasons for the denial of the application were due to circumstances and conditions that either have been corrected or are no longer in existence.

(6) The cessation of review shall not constitute a denial of the application for purposes of Section 1568.062 or any other law.

SEC. 8. Section 1568.066 of the Health and Safety Code is amended and renumbered to read:

1568.092. (a) The department may prohibit a licensee from employing, or continuing the employment of, or allowing in a licensed facility, or allowing contact with clients of a licensed facility by, any employee, prospective employee, or person who is not a client who has:

(1) Violated, aided, or permitted the violation by any other person of this chapter or of any rules or regulations adopted under this chapter.

(2) Engaged in conduct which is inimical to the health, welfare, or safety of either an individual, in or receiving services from the facility, or the people of the State of California.

(3) Been denied an exemption to work or to be present in a facility, when that person has been convicted of a crime as defined in Section 1568.09.

(4) Engaged in any other conduct which would constitute a basis for disciplining a licensee.

(b) The excluded person, the facility, and the licensee shall be given written notice of the basis of the action of the department and of the right to a hearing of the excluded person. The notice shall be served either by personal service or by registered mail. Within 15 days after the department serves the notice, the excluded person may file with the department a written request for a hearing. If the excluded person fails to file a written request for a hearing within the prescribed time, the action of the department shall be final.

(c) (1) The department may require the immediate exclusion of an employee, prospective employee, or person who is not a client from a facility pending a final decision of the matter when, in the opinion of the director, the action is necessary to protect residents or clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.

(2) If the department requires the immediate exclusion of an employee, prospective employee, or person who is not a client from a facility, the department shall serve an order of immediate exclusion upon the excluded person which shall notify the excluded person of the basis of the department's action and of the excluded person's right to a hearing.

(3) Within 15 days after the department serves an order of immediate exclusion, the excluded person may file a written request for a hearing with the department. The department's action shall be final if the excluded person does not file a request for a hearing within the prescribed time. The department shall do the following upon receipt of a written request for a hearing:

(A) Within 30 days of receipt of the request for a hearing, serve an accusation upon the excluded person.

(B) Within 60 days of receipt of a notice of defense by the excluded person pursuant to Section 11506 of the Government Code, conduct a hearing on the accusation.

(4) An order of immediate exclusion of the excluded person from the facility shall remain in effect until the hearing is completed and the director has made a final determination on the merits. However, the order of immediate exclusion shall be deemed vacated if the director fails to make a final determination on the merits within 60 days after the original hearing has been completed.

(d) An excluded person who files a written request for a hearing with the department pursuant to this section shall, as part of the written request, provide his or her current mailing address. The excluded person shall subsequently notify the department in writing of any change in mailing address, until the hearing process has been completed or terminated.

(e) Hearings held pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department.

(f) The department may institute or continue a disciplinary proceeding against an employee, prospective employee, or person who is not a client upon any ground provided by this section, or enter an order prohibiting the excluded person's employment or presence in the facility or otherwise take disciplinary action against the excluded person, notwithstanding any resignation, withdrawal of employment application or change of duties by the excluded person, or any discharge, failure to hire or reassignment of the excluded person by the licensee or that the excluded person no longer has contact with clients at the facility.

(g) A licensee's failure to comply with the department's prohibition of employment or presence in the facility shall be grounds for disciplining the licensee pursuant to Section 1568.082.

(h) (1) (A) In cases where the excluded person petitioned for a hearing, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or from being a certified foster parent for the remainder of the excluded person's life.

(B) The excluded individual may petition for reinstatement one year after the effective date of the decision and order of the department upholding the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the decision and order.

(2) (A) In cases where the department informed the excluded person of his or her right to petition for a hearing and the excluded person did not petition for a hearing, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or a certified foster parent for the remainder of the excluded person's life.

(B) The excluded individual may petition for reinstatement after one year has elapsed from the date of the notification of the exclusion and the right to petition for a hearing by the department upholding the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the exclusion order.

SEC. 9. Section 1568.09 of the Health and Safety Code is amended to read:

1568.09. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with residents of residential care facilities for persons with a chronic, life-threatening illness may pose a risk to the residents' health and safety.

(a) Before issuing a license to any person or persons to operate or manage a residential care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code. The following shall apply to the criminal record information:

(1) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(2) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services shall cease processing the application until the conclusion of the trial.

(3) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(4) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(b) In addition to the applicant, the provisions of this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff of the facility.

(2) Any person, other than a resident, residing in the facility.

(3) Any person who provides resident assistance in dressing, grooming, bathing, or personal hygiene.

(4) Any staff person or employee who has frequent and routine contact with the residents. In determining who has frequent contact, any volunteer who is in the facility shall be exempt unless the volunteer is used to replace or supplement staff in providing direct care and supervision of residents. A volunteer who provides direct care and supervision shall be exempt if the volunteer is a resident's spouse, significant other, friend or family member and provides direct care and supervision to that resident only at the request of the resident. In determining who has routine contact, staff and employees under direct onsite supervision and who are not providing direct care and supervision or who have only occasional or intermittent contact with residents shall be exempt.

(5) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in that capacity.

(6) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a residential care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice not later than four calendar days following employment, residence, or initial presence in the residential care facility.

(2) These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints. Fingerprints not submitted to the Department of Justice, as required in this section, shall result in the citation of a deficiency and the fingerprints shall then be submitted to the State Department of Social Services for processing.

(3) Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services 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 licensee and the State Department of Social Services with a statement of that fact within 15 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 15

calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

(4) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4, 273a, or 273d, subdivision (a) or (b) of Section 368 of the Penal Code, or a felony, the department shall notify the licensee to act immediately to terminate the person's employment, remove the person from the residential care facility, or bar the person from entering the residential care facility. The department may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the department, act immediately to either (1) terminate the person's employment, remove the person from the residential care facility, or bar the person from entering the residential care facility; or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1568.082.

(5) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(6) Concurrently with notifying the licensee pursuant to paragraph (4), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (4).

(d) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of the sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting that 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, information, or indictment. For purposes of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(e) The State Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license as specified in paragraphs (1) and (4) of subdivision (a), or for employment, residence, or presence in a residential care facility as specified in paragraphs (4), (5), and (6) of subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1568.092.

(g) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal

records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office.

(2) The State Department of Social Services shall hold criminal records clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal records clearance to be transferred.

(h) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1568.092, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

SEC. 10. Section 1568.092 of the Health and Safety Code is repealed.

SEC. 11. Section 1568.093 is added to the Health and Safety Code, to read:

1568.093. (a) (1) If the department determines that a person was issued a license under this chapter or under Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter 3.01 (commencing with Section 1568.01), Chapter 3.2 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) and the prior license was revoked within the preceding two years, the department shall exclude the person from any facility licensed by the department pursuant to the chapter.

(2) If the department determines that a person previously was issued a certificate of approval by a foster family agency which was revoked by the department pursuant to subdivision (b) of Section 1534 within the preceding two years, the department shall exclude the person from any facility licensed by the department pursuant to this chapter.

(b) If the department determines that the person had previously applied for a license under any of the chapters listed in paragraph (1) of subdivision (a) and the application was denied within the last year, the department shall exclude the person from any facility licensed by the department pursuant to this chapter and as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall exclude the person from any facility licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall exclude the person from any

facility licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(3) The department may determine not to exclude the person from any facility licensed by the department pursuant to this chapter if it has determined that the reasons for the denial of the application were due to circumstances and conditions that either have been corrected or are no longer in existence.

(c) If the department determines that the person had previously applied for a certificate of approval with a foster family agency and the department ordered the foster family agency to deny the application pursuant to subdivision (b) of Section 1534, the department shall exclude the person from any facility licensed by the department pursuant to this chapter and as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall exclude the person from any facility licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall exclude the person from any facility licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(3) The department may determine not to exclude the person from any facility licensed by the department pursuant to this chapter if it has determined that the reasons for the denial of the application were due to circumstances and conditions that either have been corrected or are no longer in existence.

(d) Exclusion of an individual pursuant to this section shall not be considered an order of exclusion for purposes of Section 1558 or any other law.

SEC. 12. Section 1569.16 of the Health and Safety Code is amended to read:

1569.16. (a) (1) If an application for a license indicates, or the department determines during the application review process, that the applicant previously was issued a license under this chapter or under Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter 3 (commencing with Section 1500), Chapter 3.01 (commencing with Section 1568.01), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) and the prior license was revoked within the preceding two years, the department shall cease any further review of the application until two years have elapsed from the date of the revocation. All residential care facilities for the elderly are exempt

from the health planning requirements contained in Part 2 (commencing with Section 127125) of Division 107.

(2) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant previously was issued a certificate of approval by a foster family agency that was revoked by the department pursuant to subdivision (b) of Section 1534 within the preceding two years, the department shall cease any further review of the application until two years shall have elapsed from the date of the revocation.

(3) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant was excluded from a facility licensed by the department pursuant to Section 1558, 1568.092, 1569.58, or 1596.8897, the department shall cease any further review of the application unless the excluded individual has been reinstated pursuant to Section 11522 of the Government Code by the department.

(b) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant had previously applied for a license under any of the chapters listed in paragraph (1) of subdivision (a) and the application was denied within the last year, the department shall, except as provided in Section 1569.22, cease further review of the application until one year has elapsed from the date of the denial letter. In those circumstances where denials are appealed and upheld at an administrative hearing, review of the application shall cease for one year from the date of the decision and order being rendered by the department. The cessation of review shall not constitute a denial of the application.

(c) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant had previously applied for a certificate of approval with a foster family agency and the department ordered the foster family agency to deny the application pursuant to subdivision (b) of Section 1534, the department shall cease further review of the application as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall cease further review of the application until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall cease further review of the application until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(3) The department may continue to review the application if it has determined that the reasons for the denial of the application were due to circumstances and conditions that either have been corrected or are no longer in existence.

(d) The cessation of review shall not constitute a denial of the application for purposes of Section 1526 or any other law.

SEC. 13. Section 1569.17 of the Health and Safety Code is amended to read:

1569.17. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a residential care facility for the elderly. The Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with clients of residential care facilities for the elderly may pose a risk to the clients' health and safety.

(a) Before issuing a license to any person or persons to operate or manage a residential care facility for the elderly, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has been exonerated. That criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code. The following shall apply to the criminal record information:

(1) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(2) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services shall cease processing the application until the conclusion of the trial.

(3) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(4) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor

traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(b) In addition to the applicant, the provisions of this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff.

(2) Any person, other than a client, residing in the facility.

(3) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene.

(4) Any staff person or employee who has frequent and routine contact with the clients. In determining who has frequent contact, any volunteer who is in the facility shall be exempt unless the volunteer is used to replace or supplement staff in providing direct care and supervision of clients. In determining who has routine contact, staff and employees under direct onsite supervision and who are not providing direct care and supervision or who have only occasional or intermittent contact with clients shall be exempt.

(5) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(6) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a residential facility for the elderly, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice not later than 20 calendar days following employment, residence, or initial presence in the residential care facility for the elderly.

(2) These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints. Fingerprints not submitted to the Department of Justice, as required in this section, shall result in the citation of a deficiency and the fingerprints shall then be submitted to the State Department of Social Services for processing.

(3) Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services 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 licensee and the State Department of Social Services with a statement of that fact within 15 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 15

calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

(4) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4, 273a, or 273d, subdivision (a) or (b) of Section 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee in writing within 15 calendar days of the receipt of the notification from the Department of Justice to act immediately to terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly; or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered by the department. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1569.50.

(5) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(6) Concurrently with notifying the licensee pursuant to paragraph (4), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (4).

(d) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of

conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of the sentence, notwithstanding a subsequent order pursuant to the provisions of Sections 1203.4 and 1203.4a of the Penal Code permitting a person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice or documents admissible in a criminal action pursuant to Section 969b of the Penal Code shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(e) The State Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license as specified in paragraphs (1) and (4) of subdivision (a), or for employment, residence, or presence in a residential care facility for the elderly as specified in paragraphs (4), (5), and (6) of subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director shall notify in writing the licensee or the applicant of his or her decision within 60 days of receipt of all information from the applicant and

other sources determined necessary by the director for the rendering of a decision pursuant to this subdivision.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1569.58.

(g) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office.

(2) The State Department of Social Services shall hold criminal records clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal records clearances to be transferred under this section.

(h) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1569.58, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(i) (1) In order to expedite the current criminal record clearance and fingerprint process of the Department of Justice, the Department of Justice shall complete work on all of its current backlog of criminal record clearances for residential care facilities for the elderly licensed by the State Department of Social Services by July 1, 1995.

(2) Effective January 1, 1995, the Department of Justice shall complete all new requests for criminal record clearances for residential care facilities for the elderly within 30 days of receipt.

(3) The Department of Justice shall coordinate with the State Department of Social Services to establish and implement an automated live-scan processing system for fingerprints in two district offices of the Community Care Licensing Division of the State Department of Social Services by July 1, 1995. These live-scan processing units shall be connected to the main system at the Department of Justice by July 1, 1996, and shall become part of that department's pilot project in accordance with its long-range plan. The State Department of Social Services may charge a fee not to exceed five dollars ($5) or the actual cost of processing a set of live-scan fingerprints.

(4) The Department of Justice shall provide a report to the Assembly Human Services Committee and to the Senate Health and Human Services Committee by July 15, 1995, regarding the completion of backlogged criminal record clearance requests

pursuant to paragraph (1) and the progress on implementing the automated live-scan processing system in the two district offices pursuant to paragraph (3). The Department of Justice shall provide a report to the Assembly Human Services Committee and to the Senate Health and Human Services Committee by April 15, 1996, regarding the progress of the implementation of the statewide CAL-CII system; the number of requests for criminal clearances received pursuant to this section during the previous year; the number of criminal record clearances requested and completed pursuant to this section within a 17-day "expedite" period or within the 30-day period required by paragraph (2); and the number of requests and reasons for delays beyond the 30-day period.

SEC. 14. Section 1569.58 of the Health and Safety Code is amended to read:

1569.58. (a) The department may prohibit a licensee from employing, or continuing the employment of, or allowing in a licensed facility, or allowing contact with clients of a licensed facility by, any employee, prospective employee, or person who is not a client who has:

(1) Violated, or aided or permitted the violation by any other person of, any provisions of this chapter or of any rules or regulations promulgated under this chapter.

(2) Engaged in conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility, or the people of the State of California.

(3) Been denied an exemption to work or to be present in a facility, when that person has been convicted of a crime as defined in Section 1569.17.

(4) Engaged in any other conduct which would constitute a basis for disciplining a licensee.

(b) The excluded person, the facility, and the licensee shall be given written notice of the basis of the department's action and of the excluded person's right to a hearing. The notice shall be served either by personal service or by registered mail. Within 15 days after the department serves the notice, the excluded person may file with the department a written request for a hearing. If the excluded person fails to file a written request for a hearing within the prescribed time, the department's action shall be final.

(c) (1) The department may require the immediate exclusion of an employee, prospective employee, or person who is not a client from a facility pending a final decision of the matter, when, in the opinion of the director, the action is necessary to protect residents or clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.

(2) If the department requires the immediate exclusion of an employee, prospective employee, or person who is not a client from a facility the department shall serve an order of immediate exclusion upon the excluded person which shall notify the excluded person of

the basis of the department's action and of the excluded person's right to a hearing.

(3) Within 15 days after the department serves an order of immediate exclusion, the excluded person may file a written request for a hearing with the department. The department's action shall be final if the excluded person does not file a request for a hearing within the prescribed time. The department shall do the following upon receipt of a written request for a hearing:

(A) Within 30 days of receipt of the request for a hearing, serve an accusation upon the excluded person.

(B) Within 60 days of receipt of a notice of defense by the excluded person pursuant to Section 11506 of the Government Code, conduct a hearing on the accusation.

(4) An order of immediate exclusion of the excluded person from the facility shall remain in effect until the hearing is completed and the director has made a final determination on the merits. However, the order of immediate exclusion shall be deemed vacated if the director fails to make a final determination on the merits within 60 days after the original hearing has been completed.

(d) An excluded person who files a written request for a hearing with the department pursuant to this section shall, as part of the written request, provide his or her current mailing address. The excluded person shall subsequently notify the department in writing of any change in mailing address, until the hearing process has been completed or terminated.

(e) Hearings held pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department.

(f) The department may institute or continue a disciplinary proceeding against an employee, prospective employee, or person who is not a client upon any ground provided by this section, or enter an order prohibiting the excluded person's employment or presence in the facility or otherwise take disciplinary action against the excluded person, notwithstanding any resignation, withdrawal of employment application or change of duties by the excluded person, or any discharge, failure to hire or reassignment of the excluded person by the licensee or that the excluded person no longer has contact with clients at the facility.

(g) A licensee's failure to comply with the department's prohibition of employment or presence in the facility shall be grounds for disciplining the licensee pursuant to Section 1569.50.

(h) (1) (A) In cases where the excluded person petitioned for a hearing, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or from being a certified foster parent for the remainder of the excluded person's life.

(B) The excluded individual may petition for reinstatement one year after the effective date of the decision and order of the department upholding the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the decision and order.

(2) (A) In cases where the department informed the excluded person of his or her right to petition for a hearing and the excluded person did not petition for a hearing, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or a certified foster parent for the remainder of the excluded person's life.

(B) The excluded individual may petition for reinstatement after one year has elapsed from the date of the notification of the exclusion and the right to petition for a hearing by the department upholding the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the exclusion order.

SEC. 15. Section 1569.59 is added to the Health and Safety Code, to read:

1569.59. (a) (1) If the department determines that a person was issued a license under this chapter or under Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter 3.01 (commencing with Section 1568.01), Chapter 3.2 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) and the prior license was revoked within the preceding two years, the department shall exclude the person from any facility licensed by the department pursuant to the chapter.

(2) If the department determines that a person previously was issued a certificate of approval by a foster family agency which was revoked by the department pursuant to subdivision (b) of Section 1534 within the preceding two years, the department shall exclude the person from any facility licensed by the department pursuant to this chapter.

(b) If the department determines that the person had previously applied for a license under any of the chapters listed in paragraph (1) of subdivision (a) and the application was denied within the last year, the department shall exclude the person from any facility licensed by the department pursuant to this chapter and as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall exclude the person from any facility licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition

for a hearing, the department shall exclude the person from any facility licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(3) The department may determine not to exclude the person from any facility licensed by the department pursuant to this chapter if it has determined that the reasons for the denial of the application were due to circumstances and conditions that either have been corrected or are no longer in existence.

(c) If the department determines that the person had previously applied for a certificate of approval with a foster family agency and the department ordered the foster family agency to deny the application pursuant to subdivision (b) of Section 1534, the department shall exclude the person from any facility licensed by the department pursuant to this chapter and as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall exclude the person from any facility licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall exclude the person from any facility licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(3) The department may determine not to exclude the person from any facility licensed by the department pursuant to this chapter if it has determined that the reasons for the denial of the application were due to circumstances and conditions that either have been corrected or are no longer in existence.

(d) Exclusion of an individual pursuant to this section shall not be considered an order of exclusion for purposes of Section 1558 or any other law.

SEC. 16. Section 1596.851 of the Health and Safety Code is amended to read:

1596.851. (a) (1) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant previously was issued a license under this act or under Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter 3 (commencing with Section 1500), Chapter 3.01 (commencing with Section 1568.01), or Chapter 3.3 (commencing with Section 1569) and that the prior license was revoked within the preceding two years, the department shall cease any further review of the application until two years shall have elapsed from the date of the revocation.

(2) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant previously was issued a certificate of approval by a foster family agency that was revoked by the department pursuant to subdivision (b) of Section 1534 within the preceding two years, the department shall cease any further review of the application until two years have elapsed from the date of the revocation.

(3) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant was excluded from a facility licensed by the department pursuant to Section 1558, 1568.092, 1569.58, or 1596.8897, the department shall cease any further review of the application unless the excluded individual has been reinstated pursuant to Section 11522 of the Government Code by the department.

(b) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant had previously applied for a license under any of the chapters listed in paragraph (1) of subdivision (a) and the application was denied within the last year, the department shall cease further review of the application as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall cease further review of the application until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing as specified in Section 1596.879 and the applicant did not petition for a hearing, the department shall cease further review of the application until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(3) The department may continue to review the application if it has determined that the reasons for the denial of the application were due to circumstances and conditions which have been corrected or are no longer in existence. The cessation of review shall not constitute a denial of the application.

(c) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant had previously applied for a certificate of approval with a foster family agency and the department ordered the foster family agency to deny the application pursuant to subdivision (b) of Section 1534, the department shall cease further review of the application as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall cease further review of the application until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition

for a hearing, the department shall cease further review of the application until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(3) The department may continue to review the application if it has determined that the reasons for the denial of the application were due to circumstances and conditions that either have been corrected or are no longer in existence.

(d) The cessation of review shall not constitute a denial of the application for purposes of Section 1526 or any other law.

SEC. 17. Section 1596.871 of the Health and Safety Code is amended to read:

1596.871. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with child day care facility clients may pose a risk to the children's health and safety.

(a) Before issuing a license or special permit to any person to operate or manage a day care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code. No fee shall be charged by the Department of Justice or the department for the fingerprinting of an applicant who will serve six or fewer children or any family day care applicant for a license, or for obtaining a criminal record of an applicant pursuant to this section. The following shall apply to the criminal record information:

(1) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(2) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services shall cease processing the application until the conclusion of the trial.

(3) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(4) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of

subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(b) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff.

(2) Any person, other than a child, residing in the facility.

(3) Any person who provides care and supervision to the children.

(4) Any staff person or employee who has frequent and routine contact with the children. In determining who has frequent contact, any volunteer who is in the facility shall be exempt unless the volunteer is used to replace or supplement staff in providing direct care and supervision of children in care. In determining who has routine contact, staff and employees under direct onsite supervision and who are not providing direct care and supervision or who have only occasional or intermittent contact with clients shall be exempt.

(5) If the applicant is a firm, partnership, association, or corporation, the chief executive officer, other person serving in like capacity, or a person designated by the chief executive officer as responsible for the operation of the facility, as designated by the applicant agency.

(6) If the applicant is a local educational agency, the president of the governing board, the school district superintendent, or a person designated to administer the operation of the facility, as designated by the local educational agency.

(7) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(8) This section does not apply to adult volunteers or adult staff employed by the applicant on an intermittent basis for less than 10 days per month, provided that these adults are under constant supervision by adults who meet the requirements of this section.

(9) This section does not apply to employees of child care and development programs under contract with the State Department of Education who have completed a criminal records clearance as part of an application to the Commission on Teacher Credentialing, and who possess a current credential or permit issued by the commission, including employees of child care and development programs that serve both children subsidized under, and children not subsidized under, a State Department of Education contract. The Commission on Teacher Credentialing shall notify the department upon revocation of a current credential or permit issued to an employee of a child care and development program under contract with the State Department of Education.

(10) This section does not apply to employees of a child care and development program operated by a school district, county office of education, or community college district under contract with the State Department of Education who have completed a criminal records clearance as a condition of employment. The school district, county office of education, or community college district upon receiving information that the status of an employee's criminal record clearance has changed shall submit that information to the department.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a child day care facility be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal conviction. The licensee shall submit these fingerprints to the Department of Justice not later than four calendar days following employment, residence, or initial presence in the child day care facility.

(2) These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints. Fingerprints not submitted to the Department of Justice, as required in this section, shall result in the citation of a deficiency and the fingerprints shall then be submitted to the State Department of Social Services for processing. Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 15 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 15 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the department, on the basis of fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4, 273a, or 273d, subdivision (a) or (b) of Section 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility. The department may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either

(1) terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility; or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1596.885 or 1596.886.

(4) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(e) The State Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish

conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for employment, residence, or presence in a child day care facility as specified in paragraphs (3), (4), and (5) of subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character so as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1596.8897.

(g) Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(h) (1) For the purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office.

(2) The State Department of Social Services shall hold criminal records clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal records clearances to be transferred.

SEC. 18. Section 1596.8897 of the Health and Safety Code is amended to read:

1596.8897. (a) The department may prohibit a licensee from employing, or continuing the employment of, or allowing in a licensed facility, or allowing contact with clients of a licensed facility

by, any employee, prospective employee, or person who is not a client who has:

(1) Violated, or aided or permitted the violation by any other person of, any provisions of this chapter or of any rules or regulations promulgated under this chapter.

(2) Engaged in conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility, or the people of the State of California.

(3) Been denied an exemption to work or to be present in a facility, when that person has been convicted of a crime as defined in Section 1596.871.

(4) Engaged in any other conduct which would constitute a basis for disciplining a licensee.

(b) The excluded person, the facility, and the licensee shall be given written notice of the basis of the department's action and of the excluded person's right to a hearing. The notice shall be served either by personal service or by registered mail. Within 15 days after the department serves the notice, the excluded person may file with the department a written request for a hearing. If the excluded person fails to file a written request for a hearing within the prescribed time, the department's action shall be final.

(c) (1) The department may require the immediate exclusion of an employee, prospective employee, or person who is not a client from a facility pending a final decision of the matter, when, in the opinion of the director, the action is necessary to protect residents or clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.

(2) If the department requires the immediate exclusion of an employee, prospective employee, or person who is not a client from a facility, the department shall serve an order of immediate exclusion upon the excluded person which shall notify the excluded person of the basis of the department's action and of the excluded person's right to a hearing.

(3) Within 15 days after the department serves an order of immediate exclusion, the excluded person may file a written request for a hearing with the department. The department's action shall be final if the excluded person does not file a request for a hearing within the prescribed time. The department shall do the following upon receipt of a written request for a hearing:

(A) Within 30 days of receipt of the request for a hearing, serve an accusation upon the excluded person.

(B) Within 60 days of receipt of a notice of defense by the employee or prospective employee pursuant to Section 11506 of the Government Code, conduct a hearing on the accusation.

(4) An order of immediate exclusion of the excluded person from the facility shall remain in effect until the hearing is completed and the director has made a final determination on the merits. However, the order of immediate exclusion shall be deemed vacated if the

director fails to make a final determination on the merits within 60 days after the original hearing has been completed.

(d) An excluded person who files a written request for a hearing with the department pursuant to this section shall, as part of the written request, provide his or her current mailing address. The excluded person shall subsequently notify the department in writing of any change in mailing address, until the hearing process has been completed or terminated.

(e) Hearings held pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department.

(f) The department may institute or continue a disciplinary proceeding against an employee, prospective employee, or person who is not a client upon any ground provided by this section, or enter an order prohibiting the excluded person's employment or presence in the facility or otherwise take disciplinary action against the excluded person, notwithstanding any resignation, withdrawal of employment application or change of duties by the excluded person, or any discharge, failure to hire or reassignment of the excluded person by the licensee or that the excluded person no longer has contact with clients at the facility.

(g) A licensee's failure to comply with the department's prohibition of employment or presence in the facility shall be grounds for disciplining the licensee pursuant to Section 1596.885 or 1599.886.

(h) (1) (A) In cases where the excluded person petitioned for a hearing, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or from being a certified foster parent for the remainder of the excluded person's life.

(B) The excluded individual may petition for reinstatement one year after the effective date of the decision and order of the department upholding the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the decision and order.

(2) (A) In cases where the department informed the excluded person of his or her right to petition for a hearing and the excluded person did not petition for a hearing, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or a certified foster parent for the remainder of the excluded person's life.

(B) The excluded individual may petition for reinstatement after one year has elapsed from the date of the notification of the exclusion and the right to petition for a hearing by the department upholding the exclusion order pursuant to Section 11522 of the Government

Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the exclusion order.

SEC. 19. Section 1596.8898 is added to the Health and Safety Code, to read:

1596.8898. (a) (1) If the department determines that a person was issued a license under this chapter or under Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter 3.01 (commencing with Section 1568.01), Chapter 3.2 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) and the prior license was revoked within the preceding two years, the department shall exclude the person from any facility licensed by the department pursuant to the chapter.

(2) If the department determines that a person previously was issued a certificate of approval by a foster family agency which was revoked by the department pursuant to subdivision (b) of Section 1534 within the preceding two years, the department shall exclude the person from any facility licensed by the department pursuant to this chapter.

(b) If the department determines that the person had previously applied for a license under any of the chapters listed in paragraph (1) of subdivision (a) and the application was denied within the last year, the department shall exclude the person from any facility licensed by the department pursuant to this chapter and as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall exclude the person from any facility licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall exclude the person from any facility licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(3) The department may determine not to exclude the person from any facility licensed by the department pursuant to this chapter if it has determined that the reasons for the denial of the application were due to circumstances and conditions that either have been corrected or are no longer in existence.

(c) If the department determines that the person had previously applied for a certificate of approval with a foster family agency and the department ordered the foster family agency to deny the application pursuant to subdivision (b) of Section 1534, the department shall exclude the person from any facility licensed by the department pursuant to this chapter and as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall exclude the person from any facility licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall exclude the person from any facility licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(3) The department may determine not to exclude the person from any facility licensed by the department pursuant to this chapter if it has determined that the reasons for the denial of the application were due to circumstances and conditions that either have been corrected or are no longer in existence.

(d) Exclusion of an individual pursuant to this section shall not be considered an order of exclusion for purposes of Section 1558 or any other law.

SEC. 20. 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 618

An act to amend Sections 7102, 60115, and 60202 of, and to add Section 60116 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 2, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. It is the intent of the Legislature to remove an incentive to purchase diesel fuel outside of the state for consumption in California. The purpose of this bill is to impose on interstate users who purchase diesel fuel outside California, but use the fuel in the

state, a tax equivalent to the sales tax imposed upon truckers who purchase fuel in California. Interstate users who purchase diesel fuel in California but who use the fuel outside the state will be allowed a credit or refund of tax to the extent tax has already been paid by the interstate user to a diesel fuel vendor in California. It is intended that the quarterly reports required to be filed with an interstate user's base jurisdiction pursuant to the International Fuel Tax Agreement, as it may be amended from time to time, and any other reports as the State Board of Equalization may require, will be used to report and remit tax or claim credit or refund of tax.

SEC. 2. Section 7102 of the Revenue and Taxation Code is amended to read:

7102. The money in the fund shall, upon order of the Controller, be drawn therefrom for refunds under this part, credits or refunds pursuant to Section 60202, and refunds pursuant to Section 1793.25 of the Civil Code, or be transferred in the following manner:

(a) (1) All revenues, less refunds, derived under this part at the $4^3/_4$-percent rate, including the imposition of sales and use taxes with respect to the sale, storage, use, or other consumption of motor vehicle fuel which would not have been received if the sales and use tax rate had been 5 percent and if motor vehicle fuel, as defined for purposes of the Motor Vehicle Fuel License Tax Law (Part 2 (commencing with Section 7301)), had been exempt from sales and use taxes, shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and shall be transferred quarterly to the Transportation Planning and Development Account, a trust fund in the State Transportation Fund.

(2) All revenues, less refunds, derived under this part at the $4^3/_4$-percent rate, resulting from increasing after December 31, 1989, the rate of tax imposed pursuant to the Motor Vehicle Fuel License Tax Law on motor vehicle fuel, as defined for purposes of that law, shall be transferred quarterly to the Transportation Planning and Development Account, a trust fund in the State Transportation Fund.

(3) All revenues, less refunds, derived under this part at the $4^3/_4$-percent rate from the imposition of sales and use taxes on fuel, as defined for purposes of the Use Fuel Tax Law (Part 3 (commencing with Section 8601)), shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and shall be transferred quarterly to the Transportation Planning and Development Account, a trust fund in the State Transportation Fund.

(4) All revenues, less refunds, derived under this part from a rate of more than $4^3/_4$ percent pursuant to Sections 6051.1 and 6201.1 for the period December 1, 1989, to June 5, 1990, inclusive, shall be transferred to the Disaster Relief Fund created by Section 16419 of the Government Code.

(5) All revenues, less refunds, derived under this part from a rate of more than $4^3/_4$ percent pursuant to Sections 6051.1 and 6201.1 for the period June 6, 1990, to December 31, 1990, inclusive, which is attributable to the imposition of sales and use taxes with respect to the sale, storage, use, or other consumption of tangible personal property other than fuel, as defined for purposes of the Use Fuel Tax Law (Part 3 (commencing with Section 8601)), shall be transferred to the Disaster Relief Fund created by Section 16419 of the Government Code.

(6) All revenues, less refunds, derived under this part from a rate of more than $4^3/_4$ percent pursuant to Sections 6051.1 and 6201.1 for the period June 6, 1990, to December 31, 1990, inclusive, which is attributable to the imposition of sales and use taxes with respect to the sale, storage, use, or other consumption of fuel, as defined for purposes of the Use Fuel Tax Law (Part 3 (commencing with Section 8601)), shall be transferred to the Disaster Relief Fund created by Section 16419 of the Government Code.

(7) All revenues, less refunds, derived under this part from the taxes imposed pursuant to Sections 6051.2 and 6201.2 shall be transferred to the Sales Tax Account of the Local Revenue Fund for allocation to cities and counties as prescribed by statute.

(8) All revenues, less refunds, derived under this part from the taxes imposed pursuant to Sections 6051.6 and 6201.6 shall be transferred to the Interim Public Safety Account in the Local Public Safety Fund created in Section 30051 of the Government Code for allocation to counties as prescribed by statute.

(9) All revenues, less refunds, derived from the taxes imposed pursuant to Section 35 of Article XIII of the California Constitution shall be transferred to the Public Safety Account in the Local Public Safety Fund created in Section 30051 of the Government Code for allocation to counties as prescribed by statute.

(10) An amount equal to all revenues, less refunds, derived under this part at a $4^3/_4$-percent rate for the period between January 1, 1994, and July 1, 1994, from the increase in sales and use tax revenue attributable to the increase in the rate of the federal motor vehicle fuel tax between January 1, 1993, and the rate in effect on January 1, 1994, shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and an amount equal to that amount, but not exceeding seven million five hundred thousand dollars ($7,500,000) shall be transferred from the Retail Sales Tax Fund to the Small Business Expansion Fund created by Article 5 (commencing with Section 14030) of Chapter 1 of Part 5 of Division 3 of Title 1 of the Corporations Code.

(b) The balance shall be transferred to the General Fund.

(c) The estimates required by subdivision (a) shall be based on taxable transactions occurring during a calendar year, and the transfers required by subdivision (a) shall be made during the fiscal year that commences during that same calendar year. Transfers

required by paragraphs (1), (2), and (3) of subdivision (a) shall be made quarterly.

(d) Notwithstanding the designation of the Transportation Planning and Development Account as a trust fund pursuant to subdivision (a), the Controller may use the Transportation Planning and Development Account for loans to the General Fund as provided in Sections 16310 and 16381 of the Government Code. The loans shall be repaid with interest from the General Fund at the Pooled Money Investment Account rate.

(e) The Legislature may amend this section, by statute passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, if the statute is consistent with, and furthers the purposes of this section.

SEC. 3. Section 60115 of the Revenue and Taxation Code is amended to read:

60115. For the privilege of using diesel fuel in a qualified motor vehicle in this state by interstate users, there is hereby imposed upon any interstate user for each gallon of diesel fuel used in this state, a tax consisting of the following two components:

(a) A tax at the rate imposed by Section 60050.

(b) A tax at the rate prescribed by Section 60116.

SEC. 4. Section 60116 is added to the Revenue and Taxation Code, to read:

60116. Commencing on January 1, 1998, and on each January 1 thereafter, the board shall establish a tax rate per gallon, rounded to the nearest tenth of a cent, by multiplying the average retail price per gallon (including the federal excise tax and excluding the state excise tax and the sales and use tax) of diesel fuel sold in this state by a percentage equal to the combined state and local sales tax rate established by Part 1 (commencing with Section 6001) and Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code and Section 35 of Article XIII of the California Constitution. The average retail price per gallon shall be the average of weekly retail prices for the 12-month period ending August 31 of the year prior to the effective date of the new rate. In determining the average retail price per gallon, the board shall use the weekly average retail price published by the State Energy Resources Conservation and Development Commission, in its publication "Fuel Price And Supply Update." In the event the "Fuel Price And Supply Update" is delayed or discontinued, the board may base its determination on other sources of the average retail price of diesel fuel. The board shall make its determination of the rate no later than October 1 of the year prior to the effective date of the new rate.

SEC. 5. Section 60202 of the Revenue and Taxation Code is amended to read:

60202. (a) Each interstate user shall prepare and file with the board on forms prescribed by the board a return showing the amount of diesel fuel used during the quarterly reporting period by the

interstate user in this state, the amount of any tax due, and any other information as the board may require for the administration of this part. The return shall be filed with the board on or before the last day of the calendar month following the close of the quarterly period to which it relates, together with a remittance payable to the board of the amount of tax due. To facilitate the administration of this part, the board may require the filing of returns for other than quarterly periods.

(b) An interstate user subject to the tax imposed by Section 60115 shall be allowed a credit against the amount of tax due on his or her return for an amount equal to the tax imposed by Section 60115 on diesel fuel purchased in this state in that same return period for use in the operation of a qualified motor vehicle. No credit shall be allowed unless the tax imposed by Section 60050 and the taxes imposed by Part 1 (commencing with Section 6001) and Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code and Section 35 of Article XIII of the California Constitution have been paid upon the purchase of the diesel fuel by the interstate user to a diesel vendor in this state. When the amount of the credit for any return period exceeds the amount of tax due for the return period, the excess shall be allowed as a credit against the amount of tax due for succeeding reporting periods or shall be refunded.

(c) Credits and refunds allowed pursuant to subdivision (b) shall be charged against the Motor Vehicle Fuel Account to the extent the total amount of credits and refunds allowed to all taxpayers for the fiscal year does not exceed the combined amounts due under subdivisions (a) and (b) of Section 60115. To the extent the total amount of credits and refunds allowed to all taxpayers for the fiscal year pursuant to subdivision (b) exceeds the combined amounts due under subdivisions (a) and (b) of Section 60115, the credits and refunds shall be charged against the Motor Vehicle Fuel Account as to the amount of the credits and refunds established under subdivision (a) of Section 60115 and shall be charged against the Retail Sales Tax Fund as to the amount of the credits and refunds established under subdivision (b) of Section 60115.

SEC. 6. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 619

An act to amend Section 719 of the Harbors and Navigation Code, to amend Section 99234 of the Public Utilities Code, to amend Sections 188.8, 2104, 2110, and 2152 of the Streets and Highways Code, and to amend Sections 1653.5, 1808, 1810, 4000.37, 11704.5, and 27314.5

of the Vehicle Code, relating to transportation, and making an appropriation therefor.

[Approved by Governor October 2, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Section 719 of the Harbors and Navigation Code is amended to read:

719. (a) A person is qualified to submit an application for a broker's license if, as shown on the department's records, the person has been employed, within five years preceding his or her application, as a licensed salesperson for at least one year, has been licensed as a broker within five years preceding his or her application, or has been employed as a broker or a yacht salesperson in another state when that employment was a primary occupation for a minimum of three continuous years immediately preceding application for a broker's license in California. Proof of employment as a broker in another state or of conducting a marine business selling new or used yachts in California shall be in the form of all of the following:

(1) State, if applicable, and federal income tax returns, or a proof of earning statement made by the applicant under penalty of perjury, for the three-year period preceding application in California.

(2) If bonded, a statement issued by the applicant's bonding company that no action has been taken against the bond for fraud or gross misrepresentation for the period for which the bond has been issued.

(3) A copy of all business permits, issued by any state, county, or city agency, which, if applicable, includes the fictitious business name ("dba" or "doing business as") under which the applicant conducted a yacht or ship brokerage business or a marine business selling new or used yachts in California for the three-year period preceding application for a California broker's license.

(4) If the applicant conducts a yacht or ship brokerage business in another state that requires broker or salesperson licensing, evidence of a current license in that state.

(b) If the applicant is a partnership, then one of the partners of the applicant shall have the foregoing qualifications.

(c) If the applicant is a corporation, then the officer or officers of the corporation to be designated for a license as provided in this article shall have the foregoing qualifications.

(d) If the applicant is an individual, the applicant shall be at least 18 years of age.

(e) If the applicant has owned and operated a marine business selling new or used yachts for a minimum of three continuous years

immediately preceding the application, the applicant is qualified to submit an application for a broker's license.

SEC. 2. Section 99234 of the Public Utilities Code is amended to read:

99234. (a) Claims for facilities provided for the exclusive use of pedestrians and bicycles or for bicycle safety education programs shall be filed according to the rules and regulations adopted by the transportation planning agency.

(b) The money shall be allocated for the construction, including related engineering expenses, of those facilities pursuant to procedures or criteria established by the transportation planning agency for the area within its jurisdiction, or for bicycle safety education programs.

(c) The money may be allocated for the maintenance of bicycling trails which are closed to motorized traffic pursuant to procedures or criteria established by the transportation planning agency for the area within its jurisdiction.

(d) The money may be allocated without respect to Section 99231 and shall not be included in determining the apportionments to a city or county for purposes of Sections 99233.7 to 99233.9, inclusive.

(e) Facilities provided for the use of bicycles may include projects that serve the needs of commuting bicyclists, including, but not limited to, new trails serving major transportation corridors, secure bicycle parking at employment centers, park and ride lots, and transit terminals where other funds are unavailable.

(f) Notwithstanding any other provision of this section, a planning agency established in Title 7.1 (commencing with Section 66500) of the Government Code may allocate the money to the Association of Bay Area Governments for activities required by Chapter 11 (commencing with Section 5850) of Division 5 of the Public Resources Code.

(g) Within 30 days after receiving a request for a review from any city or county, the transportation planning agency shall review its allocations made pursuant to Section 99233.3.

(h) In addition to the purposes authorized in this section, a portion of the amount available to a city or county pursuant to Section 99233.3 may be allocated to develop a comprehensive bicycle and pedestrian facilities plan, with an emphasis on bicycle projects intended to accommodate bicycle commuters rather than recreational bicycle users. An allocation under this subdivision may not be made more than once every five years.

(i) Up to 20 percent of the amount available each year to a city or county pursuant to Section 99233.3 may be allocated to restripe class II bicycle lanes.

SEC. 3. Section 188.8 of the Streets and Highways Code is amended to read:

188.8. (a) From the funds programmed pursuant to Section 188, the commission shall approve programs, program amendments, and

fund reservations so that funding is distributed to each county of County Group No. 1 and in each county of County Group No. 2 during the period commencing July 1, 1983, and ending June 30, 1988, and for the period commencing July 1, 1988, and ending June 30, 1993, each period of four years thereafter, not less than an amount computed as follows:

(1) The commission shall compute, for the five-year period and for each of the four-year periods, an amount equal to 70 percent of the funds for County Groups Nos. 1 and 2, respectively, as provided in Section 188.

(2) From the amount computed for County Group No. 1 in subdivision (a) for the five-year period and each four-year period, the commission shall determine the minimum amount of programming for each county in the group based on a formula which is based 75 percent on the population of the county to the total population of County Group No. 1 and 25 percent on state highway miles in the county to the total state highway miles in County Group No. 1.

(3) From the amount computed for County Group No. 2 in subdivision (a) for the five-year period and each four-year period, the commission shall determine the minimum amount of programming for each county in the group based on a formula which is based 75 percent on the population of the county to the total population of County Group No. 2 and 25 percent on state highway miles in the county to the total state highway miles in County Group No. 2.

(b) Notwithstanding subdivision (a), that portion of the county population and state highway mileage in El Dorado and Placer Counties that is included within the jurisdiction of the Tahoe Regional Planning Agency shall be counted separately toward the area under the jurisdiction of the Tahoe Regional Transportation Agency and shall not be included in El Dorado and Placer Counties. The commission shall approve programs, program amendments, and fund reservations for the area under the jurisdiction of the Tahoe Regional Transportation Agency which shall be calculated using the formula described in paragraph (2) of subdivision (a).

(c) A county board of supervisors or, in Placer and El Dorado Counties, a regional transportation agency designated in Section 29532 of the Government Code, may adopt a resolution to pool its county minimum programming with counties adopting similar resolutions. The resolution shall provide for pooling the county minimum programming in any of the pooling counties for a four-year period and shall be submitted to the commission not later than May 1 immediately preceding the commencement of the four-year period.

(d) For the purposes of this section, "project costs" consist of any of the following:

(1) The amount programmed for right-of-way, adjusted for final estimates in the department's annual right-of-way plans, including

early hardship and protection acquisitions from 1982 or later against the first year in which right-of-way funding is programmed.

(2) The engineer's final estimate of project costs presented to the commission for approval pursuant to Section 14533 of the Government Code.

(3) Project costs shown in the program, as amended where project allocations have not yet been approved by the commission, escalated to the date of scheduled project delivery.

(4) Any preliminary, environmental, design, or construction engineering costs programmed and allocated by the commission to local agencies.

(e) Project costs shall not be changed to reflect actual right-of-way purchase costs or construction contract award amounts, or for changes in construction expenditures.

(f) For funding programmed prior to the 1990 State Transportation Improvement Program, all project costs count in the fiscal year from which the commission allocates funding; for funding programmed by the commission in the 1990 State Transportation Improvement Program and subsequently, all project costs count at the original year of commission programming, regardless of subsequent changes in schedule of project delivery. The commission may designate in a program the split funding of projects, with specified amounts or percentages of the project's cost to be assigned to separate years or four-year periods. Nevertheless, additional funding programmed by the commission to cover a cost increase greater than 120 percent of a project's base cost pursuant to paragraph (1) of subdivision (f) of Section 14529 of the Government Code shall be counted in the fiscal year from which the commission programs the additional funding, and any supplemental allocation of funds by commission vote shall be counted in the year that vote occurs.

(g) For the purpose of this section, the population in each county is that determined by the last preceding federal census, or a subsequent census validated by the Population Research Unit of the Department of Finance, at the beginning of each four-year period.

(h) For the purpose of this section, "state highway miles" means the miles of state highways open to vehicular traffic at the beginning of each four-year period.

(i) It is the intent of the Legislature that there is to be flexibility in programming under this section and Section 188 so that, while ensuring that each county will receive an equitable share of state dollars, the types of projects selected and the programs from which they are funded may vary from county to county.

SEC. 3.1. Section 2104 of the Streets and Highways Code is amended to read:

2104. A sum equal to the net revenue derived from a per gallon tax of 2.035 cents ($0.02035) under the Motor Vehicle Fuel License Tax Law (Part 2 (commencing with Section 7301) of Division 2 of the

Revenue and Taxation Code), and 1.80 cents ($0.0180) under the Use Fuel Tax Law (Part 3 (commencing with Section 8601) of that division), shall be apportioned among the counties, as follows:

(a) Each county shall be paid one thousand six hundred sixty-seven dollars ($1,667) during each calendar month, which amount shall be expended exclusively for engineering costs and administrative expenses with respect to county roads.

(b) A sum equal to the total of all reimbursable snow removal or snow grooming, or both, costs filed pursuant to subdivision (d) of Section 2152, or five million five hundred thousand dollars ($5,500,000), whichever is less, shall be apportioned in 12 approximately equal monthly apportionments for snow removal or snow grooming, or both, on county roads, as provided in Section 2110.

(c) A sum equal to five hundred thousand dollars ($500,000) shall be apportioned in 12 approximately equal monthly apportionments, as provided in Section 2110.5.

(d) Seventy-five percent of the funds payable under this section shall be apportioned among the counties monthly in the respective proportions that the number of fee-paid and exempt vehicles which are registered in each county bears to the total number of fee-paid and exempt vehicles registered in the state.

For purposes of apportionment under this subdivision, the Department of Motor Vehicles shall, as soon as possible after the last day of each calendar month, furnish to the Controller a verified statement showing the number of fee-paid and exempt vehicles which are registered in each county and in the state as of the last day of each calendar month as reflected by the records of the Department of Motor Vehicles.

(e) Of the remaining money payable, there shall be paid to each eligible county an amount monthly computed, as follows: The number of miles of maintained county roads in each county shall be multiplied by sixty dollars ($60); from the resultant amount, there shall be deducted the amount received by each county under subdivision (d) and the remainder, if any, shall be paid to each county.

(f) The remaining money payable, after the foregoing apportionments, shall be apportioned among the counties in the same proportion as the money referred to in subdivision (d).

SEC. 4. Section 2110 of the Streets and Highways Code is amended to read:

2110. (a) The moneys payable to the counties under subdivision (b) of Section 2104 shall be apportioned monthly among the several counties as follows:

(1) A sum equal to the total of all reimbursable snow removal costs filed pursuant to subdivision (d) of Section 2152, or five million five hundred thousand dollars ($5,500,000), whichever is less, shall be apportioned in 12 approximately equal monthly apportionments for snow removal or snow grooming, or both, on county roads as follows:

(2) If the total is less than five million five hundred thousand dollars ($5,500,000), the full amount of reimbursable snow removal or snow grooming, or both, costs shall be apportioned to the several counties in an amount equal to that computed pursuant to the report filed by each county pursuant to subdivision (d) of Section 2152.

(3) If the total is five million five hundred thousand dollars ($5,500,000) or more for the fiscal year, the Controller shall compute percentages for the apportionment of five million five hundred thousand dollars ($5,500,000) to the several counties in the state for snow removal or snow grooming, or both, on county roads, including the purchase of snow removal equipment therefor, and shall apportion the amount to the counties in the computed percentages. The percentage each county is to be apportioned during the fiscal year shall be derived by adding its reimbursable snow removal or snow grooming, or both, expenditures for the three preceding fiscal years as to which the Controller has received snow removal or snow grooming, or both, expenditure reports pursuant to Section 2152, and dividing the sum by the total amount of reimbursable snow removal or snow grooming, or both, expenditures by all counties in the state during those fiscal years.

(b) On or before the first day of March of each year, the Controller shall notify each county of the amount apportioned to it pursuant to this section for expenditure for snow removal or snow grooming, or both, on county roads during the following fiscal year.

SEC. 5. Section 2152 of the Streets and Highways Code is amended to read:

2152. The report shall contain the following:

(a) A detailed statement of all money available from all sources during the fiscal year covered by the report, including money made available by the United States, the state, the county or city, any other governmental agency, and money available from bond issues, special assessments, or from any other source whatever for expenditure for street or road purposes.

(b) A detailed statement of all expenditures during the fiscal year covered by the report for street or road purposes, including obligations incurred but not yet paid. The statement shall be broken down into expenditure categories,, including, but not limited to, expenditures for rights-of-way or other property, new construction, reconstruction, widening, resurfacing, maintenance, repair, and acquisition and maintenance of equipment.

The State Controller, with the advice of the department, may prescribe any other expenditure categories and may require any detail that may be deemed necessary by him or her fully to disclose the nature and extent of all financial transactions by the county or city relating to streets or roads.

(c) A detailed statement of all expenditures during the fiscal year covered by the report for snow removal or snow grooming, or both, including expenditures of money apportioned pursuant to Section

2107 or 2110. The statement shall include equipment costs in connection with snow removal or snow grooming, or both, on an hourly rental basis or on any other annual basis that the State Controller may require.

(d) In addition, the county shall compute its reimbursable snow removal costs. The reimbursable snow removal or snow grooming, or both, costs shall be in an amount equal to 80 percent of the expenditures described in subdivision (c) that are in excess of five thousand dollars ($5,000).

(e) For purposes of this section, "snow grooming" is a method whereby snow is packed down into a hard surface in order to facilitate transportation by snowmobiles or other vehicles modified or accustomed to traveling on packed snow or ice, or both.

SEC. 6. Section 1653.5 of the Vehicle Code is amended to read:

1653.5. (a) Every form prescribed by the department for use by an applicant for the issuance or renewal by the department of a driver's license or identification card pursuant to Division 6 (commencing with Section 12500) shall contain a section for the applicant's social security account number.

(b) Every form prescribed by the department for use by an applicant for the issuance, renewal, or transfer of the registration or certificate of title to a vehicle shall contain a section for the applicant's driver's license or identification card number.

(c) Any person who submits to the department a form that, pursuant to subdivision (a), contains a section for the applicant's social security account number, or pursuant to subdivision (b), the applicant's driver's license or identification card number, if any, shall furnish the appropriate number in the space provided.

(d) The department shall not complete any application that does not include the applicant's social security account number or driver's license or identification card number as required by subdivision (c).

(e) An applicant's social security account number shall not be included by the department on any driver's license, identification card, registration, certificate of title, or any other document issued by the department.

(f) Notwithstanding any other provision of law, information regarding an applicant's social security account number, obtained by the department pursuant to this section, is not a public record and shall not be disclosed by the department except for any of the following purposes:

(1) Responding to a request for information from an agency operating pursuant to, and carrying out the provisions of, Part A (Aid to Families with Dependent Children), or Part D (Child Support and Establishment of Paternity), of Subchapter IV of Chapter 7 of Title 42 of the United States Code.

(2) Implementation of Section 12419.10 of the Government Code.

(3) Responding to information requests from the Franchise Tax Board for the purpose of tax administration.

SEC. 7. Section 1808 of the Vehicle Code is amended to read:

1808. (a) Except where a specific provision of law prohibits the disclosure of records or information or provides for confidentiality, all records of the department relating to the registration of vehicles, other information contained on an application for a driver's license, abstracts of convictions, and abstracts of accident reports required to be sent to the department in Sacramento, except for abstracts of accidents where, in the opinion of a reporting officer, another individual was at fault, shall be open to public inspection during office hours. All abstracts of accident reports shall be available to law enforcement agencies and courts of competent jurisdiction.

(b) The department shall make available or disclose abstracts of convictions and abstracts of accident reports required to be sent to the department in Sacramento, as described in subdivision (a), if the date of the occurrence is not later than the following:

(1) Seven years for any violation designated as two points pursuant to Section 12810.

(2) Three years for accidents and all other violations.

(c) The department shall make available or disclose suspensions and revocations of the driving privilege while the suspension or revocation is in effect and for three years following termination of the action or reinstatement of the privilege, except that drivers license suspension actions taken pursuant to Sections 13202.6 and 13202.7, or Section 256 or 11350.6 of the Welfare and Institutions Code shall be disclosed only during the actual time period in which the suspension is in effect.

(d) The department shall not make available or disclose any suspension or revocation that has been judicially set aside or stayed.

(e) The department shall not make available or disclose personal information about any person unless the disclosure is in compliance with the Driver's Privacy Protection Act of 1994 (18 U.S.C. Sec. 2721 et seq.).

SEC. 8. Section 1810 of the Vehicle Code is amended to read:

1810. (a) Except as provided in Sections 1806.5, 1808.2, 1808.4, 1808.5, 1808.7, and 1808.8, the department may permit inspection of, or sell, or both, information from its records concerning the registration of any vehicle or information from the files of drivers' licenses at a charge sufficient to pay the actual cost to the department for providing the inspection or sale of the information, including, but not limited to, costs incurred by the department in carrying out subdivision (b), with the charge for the information to be determined by the director. This section does not apply to statistical information of the type previously compiled and distributed by the department.

(b) With respect to the inspection or sale of information concerning the registration of any vehicle or of information from the files of drivers' licenses, the department shall, by regulation, establish administrative procedures under which any person making a request

for that information shall be required to identify himself or herself and state the reason for making the request. The procedures shall provide for the verification of the name and address of the person making a request for the information, and the department may require the person to produce that information as it determines is necessary in order to ensure that the name and address of the person are his or her true name and address. The procedures may provide for a 10-day delay in the release of the requested information. The procedures shall also provide for notification to the person to whom the information primarily relates, as to what information was provided and to whom it was provided. The department shall, by regulation, establish a reasonable period of time for which a record of all the foregoing shall be maintained.

The procedures required by this subdivision do not apply to any governmental entity, any person who has applied for and has been issued a requester code by the department, or any court of competent jurisdiction.

(c) With respect to the inspection or sale of information from the files of drivers' licenses, the department may require both the full name of the driver and either the driver's license number or date of birth as identifying points of the record, except that the department may disclose a record without two identifying points if the department determines that the public interest in disclosure outweighs the public interest in personal privacy.

(d) With respect to the inspection or sale of information from the files of drivers' licenses, certificates of ownership, and registration cards, the department shall not, for a fee or otherwise, allow copying by the public.

SEC. 9. Section 4000.37 of the Vehicle Code is amended to read:

4000.37. (a) Upon application for renewal of registration of a vehicle, the department shall require that the applicant submit either the form specified in paragraph (1) or any one of the items specified in paragraph (2) as evidence that the applicant is in compliance with the financial responsibility laws of this state:

(1) A form developed by the department that includes all of the following:

(A) The name and address of the applicant.

(B) The year, make, model, and vehicle identification number of the vehicle.

(C) The name, insurer's identification number, and address of the insurance company or surety company providing a policy or bond for the vehicle.

(D) The effective date and expiration date of the policy or bond.

(E) A statement from the insurance company or surety company that the policy or bond meets the requirements of Section 16056 or 16500.5.

(2) Any of the following:

(A) A statement that the department has issued a certificate of self-insurance to the applicant pursuant to Section 16053, and the number of the certificate.

(B) A copy of a certificate or deposit number of a cash deposit that meets the requirements of Section 16054.2.

(C) An insurance covering note issued pursuant to Section 382 of the Insurance Code.

(D) A statement that the vehicle is owned or leased by, or under the direction of, the United States or any public entity that is included in Section 811.2 of the Government Code.

(b) This section does not apply to a vehicle for which a certification has been filed pursuant to Section 4604, until the vehicle is registered for operation on the highway.

(c) This section shall become operative on January 1, 1997.

(d) This section shall remain in effect only until January 1, 2000, or until the date determined by the director pursuant to paragraph (2) of subdivision (a) of Section 1680, whichever is later, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2000, deletes or extends that date.

SEC. 10. Section 11704.5 of the Vehicle Code is amended to read:

11704.5. (a) Commencing January 1, 1998, except as provided in subdivision (d), every person who applies for a dealer's license pursuant to Section 11701 shall be required to take and successfully complete a written examination prepared and administered by the department before a license may be issued. The examination shall include, but need not be limited to, all of the following laws and subjects:

(1) Division 12 (commencing with Section 24000), relating to equipment of vehicles.

(2) Advertising.

(3) Odometers.

(4) Vehicle licensing and registration.

(5) Branch locations.

(6) Offsite sales.

(7) Unlawful dealer activities.

(8) Handling, completion, and disposition of departmental forms.

(b) Prior to the first taking of an examination under subdivision (a), every applicant shall successfully complete a preliminary educational program of not less than four hours. The program shall address, but not be limited to, all of the following topics:

(1) Chapter 2B (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code, relating to motor vehicle sales finance.

(2) Motor vehicle financing.

(3) Truth in lending.

(4) Sales and use taxes.

(5) Division 12 (commencing with Section 24000), relating to equipment of vehicles.

(6) Advertising.
(7) Odometers.
(8) Vehicle licensing and registration.
(9) Branch locations.
(10) Offsite sales.
(11) Unlawful dealer activities.
(12) Air pollution control requirements.
(13) Regulations of the Bureau of Automotive Repair.
(14) Handling, completion, and disposition of departmental forms.

(c) Instruction may be provided by generally accredited educational institutions, private vocational schools, correspondence institutions, and educational programs and seminars offered by professional societies, organizations, trade associations, and other educational and technical programs that meet the requirements of this section or by the department.

(d) This section does not apply to any of the following:

(1) A new motor vehicle dealer or any employee of that dealer.

(2) A person who holds a valid license as a dealer at the time of application.

(3) A person who held a license as a dealer during the 36 months immediately preceding the date of the receipt of the application by the department.

(4) A person who holds a valid license as an automobile dismantler or any employee of that dismantler.

SEC. 11. Section 27314.5 of the Vehicle Code is amended to read:

27314.5. (a) (1) Subject to paragraph (3), no dealer shall sell or offer for sale any used passenger vehicle of a model year of 1972 to 1990, inclusive, unless there is affixed to the window of the left front door or, if there is no window, to another suitable location so that it may be seen and read by a person standing outside the vehicle at that location, a notice, printed in 14-point type, which reads as follows:

"WARNING: While use of all seat belts reduces the chance of ejection, failure to install and use shoulder harnesses with lap belts can result in serious or fatal injuries in some crashes. Lap-only belts increase the chance of head and neck injury by allowing the upper torso to move unrestrained in a crash and increase the chance of spinal column and abdominal injuries by concentrating excessive force on the lower torso. Because children carry a disproportionate amount of body weight above the waist, they are more likely to sustain those injuries. Shoulder harnesses may be available that can be retrofitted in this vehicle. For more information call the Auto Safety Hotline at 1-800-424-9393."

(2) The notice shall remain affixed to the vehicle pursuant to paragraph (1) at all times that the vehicle is for sale.

(3) The notice is not required to be affixed to any vehicle equipped with both a lap belt and a shoulder harness for the driver and one passenger in the front seat of the vehicle and for at least two passengers in the rear seat of the vehicle.

(b) (1) In addition to the requirements of subdivision (a), and subject to paragraph (3) and subdivision (c), the dealer shall affix, to one rear seat lap belt buckle of every used passenger vehicle of a model year of 1972 to 1990, inclusive, that has a rear seat, a notice, printed in 10-point type, that reads as follows:

"WARNING: While use of all seat belts reduces the chance of ejection, failure to install and use shoulder harnesses with lap belts can result in serious or fatal injuries in some crashes. Shoulder harnesses may be available that can be retrofitted in this vehicle. For more information, call the Auto Safety Hotline at 1-800-424-9393."

(2) The notice shall remain affixed to the vehicle pursuant to paragraph (1) at all times that the vehicle is for sale.

(3) The message is not required to be affixed to any vehicle either equipped with both a lap belt and a shoulder harness for at least two passengers in the rear seat or having no rear seat lap belts.

(c) A dealer is not in violation of subdivision (b) unless a private nonprofit entity has furnished a supply of the appropriate notices suitable for affixing as required free of charge or, having requested a resupply of notices, has not received the resupply.

(d) The department shall furnish, to a nonprofit private entity for purposes of this section, for a fee not to exceed its costs in so furnishing, at least once every six months, a list of all licensed dealers who sell used passenger vehicles.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 620

An act to amend Section 15619 of the Government Code, and to amend Sections 6203, 7102, 8255, 8651.7, 9255, 30179, 30366, 30455,

32405, 40116, 43455, 45655, 46506, 46751, 50142.1, 50161, 55225, 60120, 60121, 60361, 60524, 60608, and 60609 of, to add Sections 7204.5, 9255.1, 50162, and 60105 to, and to repeal Sections 60104 and 60709 of, the Revenue and Taxation Code, and to amend Sections 2104, 2105, and 2107 of the Streets and Highways Code, relating to taxation.

[Approved by Governor October 2, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Section 15619 of the Government Code is amended to read:

15619. Any member or ex-member of the State Board of Equalization, or any agent employed by it, or the Controller, or ex-Controller, or any person employed by him or her, or any person who has at any time obtained such knowledge from any of the foregoing officers or persons shall not divulge or make known in any manner not provided by law, any of the following items of information concerning the business affairs of companies reporting to the board:

(a) Any information concerning the business affairs of any company that is gained during an examination of its books and accounts or in any other manner, and is not required by law to be reported to the State Board of Equalization.

(b) Any information, other than the assessment and the amount of taxes levied, obtained by the State Board of Equalization in accordance with law from any company other than one concerning which that information is required by law to be made public.

(c) Any particular item of information relating to the disposition of its earnings contained in the report of a quasi-public corporation that the corporation, by written communication specifying the items and presented at the time when it files its report, requests shall be treated as confidential.

Nothing in this section shall be construed as preventing examination of these records and reports by law enforcement agencies, grand juries, boards of supervisors, or their duly authorized agents, employees or representatives conducting an investigation of an assessor's office pursuant to Section 25303, and other duly authorized legislative or administrative bodies of the state pursuant to their authorization to examine these records.

Successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest, and penalties.

The Governor may authorize examination of these reports by other state officers. In that event the information obtained by these persons

shall not be made public. The Governor, however, may direct that any of the information referred to in this section shall be made public.

Any violation of this section is a misdemeanor and punishable by a fine not to exceed one thousand dollars ($1,000), or by imprisonment not to exceed six months, or both, at the discretion of the court.

SEC. 2. Section 6203 of the Revenue and Taxation Code is amended to read:

6203. Except as provided by Sections 6292 and 6293, every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state, not exempted under Chapter 3.5 (commencing with Section 6271) or Chapter 4 (commencing with Section 6351), shall, at the time of making the sales or, if the storage, use, or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use, or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the board.

As respects leases constituting sales of tangible personal property, the tax shall be collected from the lessee at the time amounts are paid by the lessee under the lease.

"Retailer engaged in business in this state" as used in this section and Section 6202 means and includes any of the following:

(a) Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business.

(b) Any retailer having any representative, agent, salesperson, canvasser, independent contractor, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, installing, assembling, or the taking of orders for any tangible personal property.

(c) As respects a lease, any retailer deriving rentals from a lease of tangible personal property situated in this state.

(d) Any retailer soliciting orders for tangible personal property by means of a telecommunication or television shopping system (which utilizes toll-free numbers) which is intended by the retailer to be broadcast by cable television or other means of broadcasting, to consumers located in this state.

(e) (1) Any retailer soliciting orders for tangible personal property by mail if the solicitations are substantial and recurring and if the retailer benefits from any banking, financing, debt collection, telecommunication, or marketing activities occurring in this state or benefits from the location in this state of authorized installation, servicing, or repair facilities.

(2) This subdivision shall become operative upon the enactment of any congressional act that authorizes states to compel the collection of state sales and use taxes by out-of-state retailers.

(f) Any retailer having a franchisee or licensee operating under its trade name if the franchisee or licensee is required to collect the tax under this section.

(g) Notwithstanding Section 7262, a retailer specified in subdivision (d), (e), or (f) above, and not specified in subdivision (a), (b), or (c) above, is a "retailer engaged in business in this state" for the purposes of this part and Part 1.5 (commencing with Section 7200) only.

(h) (1) For purposes of this section, "engaged in business in this state" does not include the taking of orders from customers in this state through a computer telecommunications network located in this state which is not directly or indirectly owned by the retailer when the orders result from the electronic display of products on that same network. The exclusion provided by this subdivision shall apply only to a computer telecommunications network that consists substantially of on-line communications services other than the displaying and taking of orders for products.

(2) This subdivision shall become inoperative upon the earlier of the following dates:

(A) The operative date of provisions of a congressional act that authorize states to compel the collection of state sales and use taxes by out-of-state retailers.

(B) The date five years from the effective date of the act adding this subdivision.

SEC. 3. Section 7102 of the Revenue and Taxation Code is amended to read:

7102. The money in the fund shall, upon order of the Controller, be drawn therefrom for refunds under this part, and pursuant to Section 1793.25 of the Civil Code, or be transferred in the following manner:

(a) (1) All revenues, less refunds, derived under this part at the 4 3/4-percent rate, including the imposition of sales and use taxes with respect to the sale, storage, use, or other consumption of motor vehicle fuel which would not have been received if the sales and use tax rate had been 5 percent and if motor vehicle fuel, as defined for purposes of the Motor Vehicle Fuel License Tax Law (Part 2 (commencing with Section 7301)), had been exempt from sales and use taxes, shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and shall be transferred quarterly to the Transportation Planning and Development Account, a trust fund in the State Transportation Fund.

(2) All revenues, less refunds, derived under this part at the 4 3/4-percent rate, resulting from increasing after December 31, 1989, the rate of tax imposed pursuant to the Motor Vehicle Fuel License

Tax Law on motor vehicle fuel, as defined for purposes of that law, shall be transferred quarterly to the Transportation Planning and Development Account, a trust fund in the State Transportation Fund.

(3) All revenues, less refunds, derived under this part at the 4 3/4-percent rate from the imposition of sales and use taxes on fuel, as defined for purposes of the Use Fuel Tax Law (Part 3 (commencing with Section 8601)) and the Diesel Fuel Tax Law (Part 31 (commencing with Section 60001)), shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and shall be transferred quarterly to the Transportation Planning and Development Account, a trust fund in the State Transportation Fund.

(4) All revenues, less refunds, derived under this part from a rate of more than 4 3/4 percent pursuant to Sections 6051.1 and 6201.1 for the period December 1, 1989, to June 5, 1990, inclusive, shall be transferred to the Disaster Relief Fund created by Section 16419 of the Government Code.

(5) All revenues, less refunds, derived under this part from a rate of more than 4 3/4 percent pursuant to Sections 6051.1 and 6201.1 for the period June 6, 1990, to December 31, 1990, inclusive, which is attributable to the imposition of sales and use taxes with respect to the sale, storage, use, or other consumption of tangible personal property other than fuel, as defined for purposes of the Use Fuel Tax Law (Part 3 (commencing with Section 8601)), shall be transferred to the Disaster Relief Fund created by Section 16419 of the Government Code.

(6) All revenues, less refunds, derived under this part from a rate of more than 4 3/4 percent pursuant to Sections 6051.1 and 6201.1 for the period June 6, 1990, to December 31, 1990, inclusive, which is attributable to the imposition of sales and use taxes with respect to the sale, storage, use, or other consumption of fuel, as defined for purposes of the Use Fuel Tax Law (Part 3 (commencing with Section 8601)), shall be transferred to the Disaster Relief Fund created by Section 16419 of the Government Code.

(7) All revenues, less refunds, derived under this part from the taxes imposed pursuant to Sections 6051.2 and 6201.2 shall be transferred to the Sales Tax Account of the Local Revenue Fund for allocation to cities and counties as prescribed by statute.

(8) All revenues, less refunds, derived under this part from the taxes imposed pursuant to Sections 6051.6 and 6201.6 shall be transferred to the Interim Public Safety Account in the Local Public Safety Fund created in Section 30051 of the Government Code for allocation to counties as prescribed by statute.

(9) All revenues, less refunds, derived from the taxes imposed pursuant to Section 35 of Article XIII of the California Constitution shall be transferred to the Public Safety Account in the Local Public

Safety Fund created in Section 30051 of the Government Code for allocation to counties as prescribed by statute.

(10) An amount equal to all revenues, less refunds, derived under this part at a 4 3/4-percent rate for the period between January 1, 1994, and July 1, 1994, from the increase in sales and use tax revenue attributable to the increase in the rate of the federal motor vehicle fuel tax between January 1, 1993, and the rate in effect on January 1, 1994, shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and an amount equal to that amount, but not exceeding seven million five hundred thousand dollars ($7,500,000) shall be transferred from the Retail Sales Tax Fund to the Small Business Expansion Fund created by Article 5 (commencing with Section 14030) of Chapter 1 of Part 5 of Division 3 of Title 1 of the Corporations Code.

(b) The balance shall be transferred to the General Fund.

(c) The estimates required by subdivision (a) shall be based on taxable transactions occurring during a calendar year, and the transfers required by subdivision (a) shall be made during the fiscal year that commences during that same calendar year. Transfers required by paragraphs (1), (2), and (3) of subdivision (a) shall be made quarterly.

(d) Notwithstanding the designation of the Transportation Planning and Development Account as a trust fund pursuant to subdivision (a), the Controller may use the Transportation Planning and Development Account for loans to the General Fund as provided in Sections 16310 and 16381 of the Government Code. The loans shall be repaid with interest from the General Fund at the Pooled Money Investment Account rate.

(e) The Legislature may amend this section, by statute passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, if the statute is consistent with, and furthers the purposes of this section.

SEC. 3.5. Section 7102 of the Revenue and Taxation Code is amended to read:

7102. The money in the fund shall, upon order of the Controller, be drawn therefrom for refunds under this part, credits or refunds pursuant to Section 60202, and refunds pursuant to Section 1793.25 of the Civil Code, or be transferred in the following manner:

(a) (1) All revenues, less refunds, derived under this part at the 4 3/4-percent rate, including the imposition of sales and use taxes with respect to the sale, storage, use, or other consumption of motor vehicle fuel which would not have been received if the sales and use tax rate had been 5 percent and if motor vehicle fuel, as defined for purposes of the Motor Vehicle Fuel License Tax Law (Part 2 (commencing with Section 7301)), had been exempt from sales and use taxes, shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and shall be transferred quarterly to the Transportation Planning and

Development Account, a trust fund in the State Transportation Fund.

(2) All revenues, less refunds, derived under this part at the 4 3/4-percent rate, resulting from increasing after December 31, 1989, the rate of tax imposed pursuant to the Motor Vehicle Fuel License Tax Law on motor vehicle fuel, as defined for purposes of that law, shall be transferred quarterly to the Transportation Planning and Development Account, a trust fund in the State Transportation Fund.

(3) All revenues, less refunds, derived under this part at the 4 3/4-percent rate from the imposition of sales and use taxes on fuel, as defined for purposes of the Use Fuel Tax Law (Part 3 (commencing with Section 8601)) and the Diesel Fuel Tax Law (Part 31 (commencing with Section 60001)), shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and shall be transferred quarterly to the Transportation Planning and Development Account, a trust fund in the State Transportation Fund.

(4) All revenues, less refunds, derived under this part from a rate of more than 4 3/4 percent pursuant to Sections 6051.1 and 6201.1 for the period December 1, 1989, to June 5, 1990, inclusive, shall be transferred to the Disaster Relief Fund created by Section 16419 of the Government Code.

(5) All revenues, less refunds, derived under this part from a rate of more than 4 3/4 percent pursuant to Sections 6051.1 and 6201.1 for the period June 6, 1990, to December 31, 1990, inclusive, which is attributable to the imposition of sales and use taxes with respect to the sale, storage, use, or other consumption of tangible personal property other than fuel, as defined for purposes of the Use Fuel Tax Law (Part 3 (commencing with Section 8601)), shall be transferred to the Disaster Relief Fund created by Section 16419 of the Government Code.

(6) All revenues, less refunds, derived under this part from a rate of more than 4 3/4 percent pursuant to Sections 6051.1 and 6201.1 for the period June 6, 1990, to December 31, 1990, inclusive, which is attributable to the imposition of sales and use taxes with respect to the sale, storage, use, or other consumption of fuel, as defined for purposes of the Use Fuel Tax Law (Part 3 (commencing with Section 8601)), shall be transferred to the Disaster Relief Fund created by Section 16419 of the Government Code.

(7) All revenues, less refunds, derived under this part from the taxes imposed pursuant to Sections 6051.2 and 6201.2 shall be transferred to the Sales Tax Account of the Local Revenue Fund for allocation to cities and counties as prescribed by statute.

(8) All revenues, less refunds, derived under this part from the taxes imposed pursuant to Sections 6051.6 and 6201.6 shall be transferred to the Interim Public Safety Account in the Local Public

Safety Fund created in Section 30051 of the Government Code for allocation to counties as prescribed by statute.

(9) All revenues, less refunds, derived from the taxes imposed pursuant to Section 35 of Article XIII of the California Constitution shall be transferred to the Public Safety Account in the Local Public Safety Fund created in Section 30051 of the Government Code for allocation to counties as prescribed by statute.

(10) An amount equal to all revenues, less refunds, derived under this part at a 4 $^{3}/_{4}$-percent rate for the period between January 1, 1994, and July 1, 1994, from the increase in sales and use tax revenue attributable to the increase in the rate of the federal motor vehicle fuel tax between January 1, 1993, and the rate in effect on January 1, 1994, shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and an amount equal to that amount, but not exceeding seven million five hundred thousand dollars ($7,500,000) shall be transferred from the Retail Sales Tax Fund to the Small Business Expansion Fund created by Article 5 (commencing with Section 14030) of Chapter 1 of Part 5 of Division 3 of Title 1 of the Corporations Code.

(b) The balance shall be transferred to the General Fund.

(c) The estimates required by subdivision (a) shall be based on taxable transactions occurring during a calendar year, and the transfers required by subdivision (a) shall be made during the fiscal year that commences during that same calendar year. Transfers required by paragraphs (1), (2), and (3) of subdivision (a) shall be made quarterly.

(d) Notwithstanding the designation of the Transportation Planning and Development Account as a trust fund pursuant to subdivision (a), the Controller may use the Transportation Planning and Development Account for loans to the General Fund as provided in Sections 16310 and 16381 of the Government Code. The loans shall be repaid with interest from the General Fund at the Pooled Money Investment Account rate.

(e) The Legislature may amend this section, by statute passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, if the statute is consistent with, and furthers the purposes of this section.

SEC. 4. Section 7204.5 is added to the Revenue and Taxation Code, to read:

7204.5. (a) For purposes of this section:

(1) "City" means any city located within the County of Napa.

(2) "County" means the County of Napa.

(3) "Quarterly taxes" means the total amount of sales and use taxes transmitted by the board to a city or the county for a calendar quarter.

(4) "Refund" means the amount of sales and use taxes deducted by the board from a city's or the county's quarterly taxes in order to pay the city's or county's share of a sales and use tax refund due as a

result of overpayments of sales or use tax on the sale or purchase of oak barrels purchased for the purpose of physically incorporating oak into wine to be sold.

(5) "Offset portion" means that portion of the refund which exceeds fifty thousand dollars ($50,000) in a calendar quarter.

(6) For purposes of calculating the "offset portion" the total refunds issued or to be issued shall be aggregated each quarterly period and shall be offset by an amount which exceeds fifty thousand dollars ($50,000) for that quarterly period.

(b) (1) Upon notification by the board that a city or the county is subject to an offset portion, the city or county may, within 30 days after the date of that notification, request the board to deduct a pro rata share of the offset portion from that city's or county's future transmittals of sales and use taxes.

(2) Except as provided in subdivision (c), if the board has deducted a refund from the city's or county's quarterly taxes which includes an offset portion, then the following provisions apply:

(A) For the 1997 calendar year, within nine months after the board deducted an offset portion, the city or county may request the board to transmit the offset portion to that city or county. After calendar year 1997, the city or county may make that request within three months after the board deducted the offset portion.

(B) As promptly as feasible after the board receives the city's or county's request, the board shall transmit to that city or county the offset portion as part of the board's periodic transmittal of sales and use taxes.

(3) The board shall thereafter deduct a pro rata share of the offset portion from future transmittals of sales and use taxes to the city or county over a period not to exceed 12 quarters until the entire amount of the offset portion has been deducted.

(c) The board shall not transmit the offset portion of the refund to the city or county if that transmittal would reduce or delay either the board's payment of the refund to the taxpayer or the board's periodic transmittals of sales and use taxes to any other city, county, city and county, or redevelopment agency in this state.

SEC. 4.5. Section 8255 of the Revenue and Taxation Code is amended to read:

8255. (a) Upon request from the officials to whom is entrusted the enforcement of the motor fuel tax law of another government the board or the Controller may furnish to such officials such information in the possession of the board or the Controller which is deemed essential to the enforcement of the motor fuel tax laws.

Any information so furnished shall not be used for any purpose other than that for which it was furnished.

(b) The board may furnish to any state or federal agency investigating violations of or enforcing any state or federal law related to motor fuels any motor fuel information in the possession

of the board that is deemed necessary for the enforcement of those laws.

SEC. 5. Section 8651.7 of the Revenue and Taxation Code is amended to read:

8651.7. (a) The owner or operator, except an interstate user, of a vehicle propelled by a system using liquefied petroleum gas, liquid natural gas, or compressed natural gas may pay the fuel tax for the use of those fuels by paying an annual flat rate fuel tax according to the following schedule:

Unladen weight	Fee
All passenger cars and other vehicles 4,000 lbs. or less	$ 36
More than 4,000 lbs. but less than 8,001 lbs.	72
More than 8,000 lbs. but less than 12,001 lbs.	120
12,001 lbs. or more	168

(b) The annual flat rate fuel tax described in subdivision (a) shall be an annual tax. The annual period shall be that period from the end of the month in which the tax was paid to the end of the month prior in the following calendar year. When an owner or operator elects to pay the annual flat rate fuel tax on more than one vehicle, the owner or operator may request that the board prorate the tax due on a vehicle added during the annual period, so that all vehicles have the same annual period. In the year a vehicle is added, the annual flat rate fuel tax for that vehicle shall be calculated by dividing the fee set forth in subdivision (a) by 12 and multiplying the resulting amount by the number of months remaining before the beginning of the next annual period.

(c) The board shall adopt an identification procedure for vehicles with respect to which the annual flat rate tax described in subdivision (a) of this section has been paid.

SEC. 6. Section 9255 of the Revenue and Taxation Code is amended to read:

9255. It is unlawful for the board or any person having an administrative duty under this part to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any user visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except to another government, state agency or federal agency as specified in Section 9255.1. Information respecting the tax due from a user may be furnished, however, to any person owning or having an interest in a motor vehicle subject to the lien of the tax. The Governor may, by general or special order, authorize examination by other state officers, by tax

officers of another state, by the federal government, if a reciprocal arrangement exists, or by any other person of the records maintained by the board under this part. The information so obtained pursuant to the order of the Governor shall not be made public except to the extent and in the manner that the order may authorize that it be made public. Successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest and penalties.

Any violation of this section is a misdemeanor and is punishable by a fine not exceeding one thousand dollars ($1,000), by imprisonment not exceeding one year, or by both that fine and imprisonment, in the discretion of the court.

SEC. 7. Section 9255.1 is added to the Revenue and Taxation Code, to read:

9255.1. (a) Upon request from the officials to whom is entrusted the enforcement of the motor fuel tax laws of another government, the board may furnish to those officials any information in the possession of the board that is deemed essential to the enforcement of the motor fuel tax laws. Any information so furnished shall not be used for any purpose other than that for which it was furnished.

(b) The board may furnish to any state or federal agency investigating violations of or enforcing any state or federal law related to motor fuels any motor fuel information in the possession of the board that is deemed necessary for the enforcement of those laws.

SEC. 8. Section 30179 of the Revenue and Taxation Code is amended to read:

30179. Interest shall be computed, allowed, and paid upon any overpayment for the purchase of stamps or meter register settings at the modified adjusted rate per month established pursuant to Section 6591.5, from the 26th day of the calendar month following the period during which the overpayment was made. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the 25th day of the calendar month following the date upon which the claimant, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

SEC. 9. Section 30366 of the Revenue and Taxation Code is amended to read:

30366. Interest shall be computed, allowed, and paid upon any overpayment of any amount of tax at the modified adjusted rate per

month established pursuant to Section 6591.5, from the 26th day of the calendar month following the period during which the overpayment was made. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the 25th day of the calendar month following the date upon which the claimant, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

SEC. 10. Section 30455 of the Revenue and Taxation Code is amended to read:

30455. It is unlawful for the board or any person having an administrative duty under this part to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any report, or to permit any report or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person. However, the Governor may, by general or special order, authorize examination of the records maintained by the board under this part by other state officers, by tax officers of another state, by the federal government, if a reciprocal arrangement exists, or by any other person.

Successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest, and penalties.

Nothing in this section shall prevent the board from exchanging with officials of other states information concerning interstate shipments of cigarettes or tobacco products.

Any violation of this section is a misdemeanor and is punishable by a fine not exceeding one thousand dollars ($1,000), by imprisonment not exceeding one year, or by both, in the discretion of the court.

SEC. 11. Section 32405 of the Revenue and Taxation Code is amended to read:

32405. Interest shall be computed, allowed, and paid upon any overpayment of any amount of tax at the modified adjusted rate per month established pursuant to Section 6591.5, from the 16th day of the calendar month following the period during which the overpayment was made. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the 15th day of the calendar month following the date upon which the claimant, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

SEC. 12. Section 40116 of the Revenue and Taxation Code is amended to read:

40116. Interest at the modified adjusted rate per month established pursuant to Section 6591.5, shall be paid upon any overpayment of any amount of surcharge from the first day of the calendar month following the month during which the overpayment was made. In addition, a refund or credit shall be made of any interest imposed upon the person making the overpayment with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is the earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the surcharge or amount against which the credit is applied.

SEC. 13. Section 43455 of the Revenue and Taxation Code is amended to read:

43455. Interest shall be computed, allowed, and paid upon any overpayment of any amount of tax at the modified adjusted rate per month established pursuant to Section 6591.5, from the first day of the monthly period following the period during which the overpayment was made. For purposes of this section, "monthly period" means the month commencing on the day after the due date of the payment through the same date as the due date in each successive month. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the last day of the monthly period following the date upon which the claimant, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

SEC. 14. Section 45655 of the Revenue and Taxation Code is amended to read:

45655. Interest shall be computed, allowed, and paid upon any overpayment of any amount of fee at the modified adjusted rate per month established pursuant to Section 6591.5, from the first day of the monthly period following the period during which the overpayment was made. For purposes of this section, "monthly period" means the month commencing on the day after the due date of the payment through the same date as the due date in each successive month. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the last day of the monthly period following the date upon which the claimant, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the fee or amount against which the credit is applied.

SEC. 15. Section 46506 of the Revenue and Taxation Code is amended to read:

46506. Interest shall be computed, allowed, and paid upon any overpayment of any amount of fee at the modified adjusted rate per month established pursuant to Section 6591.5, from the 26th day of the calendar month following the period during which the overpayment was made. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the 25th day of the calendar month following the date upon which the claimant, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the fee or amount against which the credit is applied.

SEC. 16. Section 46751 of the Revenue and Taxation Code is amended to read:

46751. (a) The board shall provide any and all information obtained under this part to the Department of Fish and Game.

(b) The Department of Fish and Game and the board may utilize any information obtained pursuant to this part to develop data on oil spill prevention, abatement, and removal within the state. Notwithstanding any other provision of this section, the Department of Fish and Game may make oil spill prevention, abatement, and removal public.

(c) It shall be unlawful for the board, or any person having an administrative duty under Chapter 7.4 (commencing with Section 8670.1) of Division 1 of Title 2 of the Government Code or Division

7.8 (commencing with Section 8750) of the Public Resources Code to make known, in any manner whatever, the business affairs, operations, or any other information pertaining to a fee payer which was submitted to the board in a report or return required by this part, or to permit any report or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person not expressly authorized by subdivision (a), subdivision (d), and this subdivision. However, the Governor may, by general or special order, authorize examination of the records maintained by the board under this part by other state officers, by officers of another state, by the federal government, if a reciprocal arrangement exists, or by any other person. The information so obtained pursuant to the order of the Governor shall not be made public except to the extent and in the manner that the order may authorize that it be made public.

(d) The board may furnish to any state or federal agency investigating violations of or enforcing any state or federal law related to crude oil and petroleum products any crude oil and petroleum products information in the possession of the board that is deemed necessary for the enforcement of those laws.

(e) Notwithstanding subdivision (c), the successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information regarding the determination of any unpaid fee or the amount of fees, interest, or penalties required to be collected or assessed.

(f) Nothing in this section shall be construed as limiting or increasing the public's access to information on any aspect of oil spill prevention, abatement, and removal collected pursuant to other state or local laws, regulations, or ordinances.

SEC. 17. Section 50142.1 of the Revenue and Taxation Code is amended to read:

50142.1. Interest shall be computed, allowed, and paid upon any overpayment of any amount of fee at the modified adjusted rate per month established pursuant to Section 6591.5, from the 26th day of the calendar month following the period during which the overpayment was made. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the 25th day of the calendar month following the date upon which the claimant, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the fee or amount against which the credit is applied.

SEC. 18. Section 50161 of the Revenue and Taxation Code is amended to read:

50161. Except as provided in subdivisions (b) and (c) of Section 50159 and Section 50162, this chapter does not limit or increase public access to information on any aspect of petroleum contained in underground storage tanks made available pursuant to any other state or local law, regulation, or ordinance.

SEC. 19. Section 50162 is added to the Revenue and Taxation Code, to read:

50162. (a) Upon request from the officials to whom is entrusted the enforcement of the motor fuel tax laws of another government, the board may furnish to those officials any information in the possession of the board that is deemed essential to the enforcement of the motor fuel tax laws. Any information so furnished shall not be used for any purpose other than that for which it was furnished.

(b) The board may furnish to any state or federal agency investigating violations of or enforcing any state or federal law related to motor fuels any motor fuel information in the possession of the board that is deemed necessary for the enforcement of those laws.

SEC. 20. Section 55225 of the Revenue and Taxation Code is amended to read:

55225. Interest shall be computed, allowed, and paid upon any overpayment of any amount of fee at the modified adjusted rate per month established pursuant to Section 6591.5, from the first day of the monthly period following the period during which the overpayment was made. For purposes of this section, "monthly period" means the period commencing on the day after the due date of the payment and continuing through the same date in the immediately following month. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the last day of the monthly period following the date upon which the claimant, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is earlier.

(b) In the case of a credit, to the same date as to that to which interest is computed on the fee or amount against which the credit is applied.

SEC. 21. Section 60104 of the Revenue and Taxation Code is repealed:

SEC. 22. Section 60105 is added to the Revenue and Taxation Code, to read:

60105. (a) A penalty applies to any person who does any of the following:

(1) Sells or holds for sale dyed diesel fuel for any use that the person knows or has reason to know is a taxable use of the diesel fuel.

(2) Holds for use or uses dyed diesel fuel for a use other than a nontaxable use and that person knew, or had reason to know, that the diesel fuel was so dyed.

(3) Knowingly alters, or attempts to alter, the strength or composition of any dye or marker in any dyed diesel fuel.

(4) Fails to provide or post the required notice with respect to any dyed diesel fuel. The failure to provide or post the required notice creates a presumption that the person so failing knows the diesel fuel will be used for a taxable use.

(b) The amount of the penalty for each violation specified in subdivision (a) is ten dollars ($10) for every gallon of diesel fuel involved or one thousand dollars ($1,000), whichever is greater. The penalty shall be increased for subsequent violations by multiplying the penalty amount by the number of prior violations.

(c) If a penalty is imposed under this section on any business entity, each officer, employee, or agent of the entity, who participated in any act giving rise to the penalty shall be jointly and severally liable with the entity for the penalty.

SEC. 23. Section 60120 of the Revenue and Taxation Code is amended to read:

60120. Every person operating a qualified motor vehicle within and without this state or the United States shall apply to the board for a license on forms prescribed by the board. It is unlawful for any person to be an interstate user without first securing a license.

SEC. 24. Section 60121 of the Revenue and Taxation Code is amended to read:

60121. Before granting a license to an interstate user, the board may require the person to file with the board security pursuant to Section 60401. The license issued to any interstate user is not transferable and is valid until canceled or revoked.

SEC. 25. Section 60361 of the Revenue and Taxation Code is amended to read:

60361. (a) The board shall forthwith ascertain as best it may the amount of the diesel fuel removed, entered, sold, delivered, or used and shall determine immediately the tax on that amount, adding to the tax a penalty of 25 percent of the amount of tax or five hundred dollars ($500), whichever is greater, and shall give the unlicensed person notice of this determination as prescribed by Section 60340. However, where the board determines that the failure to secure a license was due to reasonable cause, the penalty may be waived. Sections 60331 and 60332 shall be applicable with respect to the finality of the determination and the right of the unlicensed person to petition for a redetermination.

Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases the claim for relief.

(b) In any case where the board does not determine an amount of tax due, the unlicensed person shall be subject to a penalty of one

hundred dollars ($100), which penalty shall be immediately due and payable. Each subsequent violation shall increase the penalty amount by one hundred dollars ($100), up to a maximum penalty of five hundred dollars ($500). The board shall serve the person with a notice of penalty assessment in the manner prescribed by Section 60340 for service of notice of a deficiency determination. However, if the board finds that the failure of the person to secure a license was due to reasonable cause, the board may waive the penalty. A person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which the request for relief is based.

SEC. 26. Section 60524 of the Revenue and Taxation Code is amended to read:

60524. Interest shall be paid upon any overpayment of any amount of tax at the modified adjusted rate per month established pursuant to Section 6591.5 from the first day of the calendar month following the period during which the overpayment is made. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is the earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

SEC. 27. Section 60608 of the Revenue and Taxation Code is amended to read:

60608. (a) Upon request from the officials to whom is entrusted the enforcement of the motor fuel tax laws of another government, the board may furnish to those officials the information in the possession of the board that is deemed essential to the enforcement of the motor fuel tax laws.

Any information so furnished shall not be used for any purpose other than that for which it was furnished.

(b) The board may furnish to any state or federal agency investigating violations of or enforcing any state or federal law related to motor fuels any motor fuel information in the possession of the board that is deemed necessary for the enforcement of those laws.

SEC. 28. Section 60609 of the Revenue and Taxation Code is amended to read:

60609. It is unlawful for the board or any person having an administrative duty under this part to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any person visited or

examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except to another government, state agency, or federal agency as specified in Section 60608. Information respecting the tax due from a person may be furnished, however, to any person owning or having an interest in a qualified motor vehicle or property subject to the lien of the tax. The Governor may, by general or special order, authorize examination by other state officers, by tax officers of another state, by the federal government, if a reciprocal arrangement exists, or by any other person of the records maintained by the board under this part. The information so obtained pursuant to the order of the Governor shall not be made public except to the extent and in the manner that the order may authorize that it be made public. Successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest, and penalties.

SEC. 29. Section 60709 of the Revenue and Taxation Code is repealed.

SEC. 30. Section 2104 of the Streets and Highways Code is amended to read:

2104. A sum equal to the net revenue derived from a per gallon tax of 2.035 cents ($0.02035) under the Motor Vehicle Fuel License Tax Law (Part 2 (commencing with Section 7301) of Division 2), 1.80 cents ($0.0180) under the Use Fuel Tax Law (Part 3 (commencing with Section 8601) of Division 2), and 1.80 cents ($0.0180) under the Diesel Fuel Tax Law (Part 31 (commencing with Section 60001) of Division 2) of the Revenue and Taxation Code, shall be apportioned among the counties, as follows:

(a) Each county shall be paid one thousand six hundred sixty-seven dollars ($1,667) during each calendar month, which amount shall be expended exclusively for engineering costs and administrative expenses with respect to county roads.

(b) A sum equal to the total of all reimbursable snow removal costs filed pursuant to subdivision (d) of Section 2152, or five million five hundred thousand dollars ($5,500,000), whichever is less, shall be apportioned in 12 approximately equal monthly apportionments for snow removal on county roads, as provided in Section 2110.

(c) A sum equal to five hundred thousand dollars ($500,000) shall be apportioned in 12 approximately equal monthly apportionments, as provided in Section 2110.5.

(d) Seventy-five percent of the funds payable under this section shall be apportioned among the counties monthly in the respective proportions that the number of fee-paid and exempt vehicles which

are registered in each county bears to the total number of fee-paid and exempt vehicles registered in the state.

For purposes of apportionment under this subdivision, the Department of Motor Vehicles shall, as soon as possible after the last day of each calendar month, furnish to the Controller a verified statement showing the number of fee-paid and exempt vehicles which are registered in each county and in the state as of the last day of each calendar month as reflected by the records of the Department of Motor Vehicles.

(e) Of the remaining money payable, there shall be paid to each eligible county an amount monthly computed, as follows: The number of miles of maintained county roads in each county shall be multiplied by sixty dollars ($60); from the resultant amount, there shall be deducted the amount received by each county under subdivision (d) and the remainder, if any, shall be paid to each county.

(f) The remaining money payable, after the foregoing apportionments, shall be apportioned among the counties in the same proportion as the money referred to in subdivision (d).

SEC. 30.5. Section 2104 of the Streets and Highways Code is amended to read:

2104. A sum equal to the net revenue derived from a per gallon tax of 2.035 cents ($0.02035) under the Motor Vehicle Fuel License Tax Law (Part 2 (commencing with Section 7301) of Division 2), 1.80 cents ($0.0180) under the Use Fuel Tax Law (Part 3 (commencing with Section 8601) of Division 2), and 1.80 cents ($0.0180) under the Diesel Fuel Tax Law (Part 31 (commencing with Section 60001) of Division 2) of the Revenue and Taxation Code, shall be apportioned among the counties, as follows:

(a) Each county shall be paid one thousand six hundred sixty-seven dollars ($1,667) during each calendar month, which amount shall be expended exclusively for engineering costs and administrative expenses with respect to county roads.

(b) A sum equal to the total of all reimbursable snow removal or snow grooming, or both, costs filed pursuant to subdivision (d) of Section 2152, or five million five hundred thousand dollars ($5,500,000), whichever is less, shall be apportioned in 12 approximately equal monthly apportionments for snow removal or snow grooming, or both, on county roads, as provided in Section 2110.

(c) A sum equal to five hundred thousand dollars ($500,000) shall be apportioned in 12 approximately equal monthly apportionments, as provided in Section 2110.5.

(d) Seventy-five percent of the funds payable under this section shall be apportioned among the counties monthly in the respective proportions that the number of fee-paid and exempt vehicles which are registered in each county bears to the total number of fee-paid and exempt vehicles registered in the state.

For purposes of apportionment under this subdivision, the Department of Motor Vehicles shall, as soon as possible after the last day of each calendar month, furnish to the Controller a verified statement showing the number of fee-paid and exempt vehicles which are registered in each county and in the state as of the last day of each calendar month as reflected by the records of the Department of Motor Vehicles.

(e) Of the remaining money payable, there shall be paid to each eligible county an amount monthly computed, as follows: The number of miles of maintained county roads in each county shall be multiplied by sixty dollars ($60); from the resultant amount, there shall be deducted the amount received by each county under subdivision (d) and the remainder, if any, shall be paid to each county.

(f) The remaining money payable, after the foregoing apportionments, shall be apportioned among the counties in the same proportion as the money referred to in subdivision (d).

SEC. 31. Section 2105 of the Streets and Highways Code is amended to read:

2105. In addition to the apportionments prescribed by Sections 2104, 2106, and 2107, from the revenues derived from a per gallon tax imposed pursuant to Section 7351 of the Revenue and Taxation Code, and a per gallon tax imposed pursuant to Section 8651 of the Revenue and Taxation Code, and a per gallon tax imposed pursuant to Sections 60050 and 60115 of the Revenue and Taxation Code, the following apportionments shall be made:

(a) A sum equal to the net revenue from a tax of 11.5 percent of any per gallon tax in excess of nine cents ($0.09) per gallon under Section 7351 of the Revenue and Taxation Code, 11.5 percent of any per gallon tax in excess of nine cents ($0.09) per gallon under Section 8651 of the Revenue and Taxation Code, and 11.5 percent of any per gallon tax in excess of nine cents ($0.09) per gallon under Sections 60050 and 60115 of the Revenue and Taxation Code, shall be apportioned among the counties, including a city and county.

The amount of apportionment to each county, including a city and county, during a fiscal year shall be calculated as follows:

(1) One million dollars ($1,000,000) for apportionment to all counties, including a city and county, in proportion to each county's receipts during the prior fiscal year under Sections 2104 and 2106.

(2) One million dollars ($1,000,000) for apportionment to all counties, including a city and county, as follows:

(A) Seventy-five percent in the proportion that the number of fee-paid and exempt vehicles which are registered in the county bears to the number of fee-paid and exempt vehicles registered in the state.

(B) Twenty-five percent in the proportion that the number of miles of maintained county roads in the county bears to the miles of maintained county roads in the state.

(3) For each county, determine its factor which is the higher amount calculated pursuant to paragraph (1) or (2) divided by the sum of the higher amounts for all of the counties.

(4) The amount to be apportioned to each county is equal to its factor multiplied by the amount available for apportionment.

(b) A sum equal to the net revenue from a tax of 11.5 percent of any per gallon tax in excess of nine cents ($0.09) per gallon under Section 7351 of the Revenue and Taxation Code, 11.5 percent of any per gallon tax in excess of nine cents ($0.09) per gallon under Section 8651 of the Revenue and Taxation Code, and 11.5 percent of any per gallon tax in excess of nine cents ($0.09) per gallon under Sections 60050 and 60115 of the Revenue and Taxation Code, shall be apportioned to cities, including a city and county, in the proportion that the total population of the city bears to the total population of all the cities in the state.

SEC. 32. 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), 2.59 cents ($0.0259) under the Use Fuel Tax Law (Part 3 (commencing with Section 8601) of Division 2), and 1.80 cents ($0.0180) under the Diesel Fuel Tax Law (Part 31 (commencing with Section 60001) of Division 2) of the Revenue and Taxation Code, 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 which has filed a report containing the information prescribed by subdivision (c) of Section 2152, and which 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, the population in each city is that determined in the manner specified in Sections 11005 and 11005.3 of the Revenue and Taxation Code.

SEC. 32.5. 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), 2.59 cents ($0.0259) under the Use Fuel Tax Law (Part 3 (commencing with Section 8601) of Division 2), and 1.80 cents ($0.0180) under the

Diesel Fuel Tax Law (Part 31 (commencing with Section 60001) of Division 2) of the Revenue and Taxation Code, 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.

SEC. 33. The Legislature hereby finds and declares that the amendment to Section 7102 of the Revenue and Taxation Code made by this act is consistent with and furthers the purpose of Proposition 116, which was enacted at the June 5, 1990, statewide election.

SEC. 34. Section 3.5 of this bill incorporates amendments to Section 7102 of the Revenue and Taxation Code proposed by both this bill and AB 1269. 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 7102 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 1269, in which case Section 7102 of the Revenue and Taxation Code, as amended by AB 1269, shall remain operative only until the operative date of this bill, at which time Section 3.5 of this bill shall become operative, and Section 3 of this bill shall not become operative.

SEC. 35. Section 30.5 of this bill incorporates amendments to Section 2104 of the Streets and Highways Code proposed by both this bill and SB 506. 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 2104 of the Streets and Highways Code, and (3) this bill is enacted after SB 506, in which case Section 30 of this bill shall not become operative.

SEC. 36. Section 32.5 of this bill incorporates amendments to Section 2107 of the Streets and Highways Code proposed by both this

bill and AB 1226. 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 2107 of the Streets and Highways Code, and (3) this bill is enacted after AB 1226, in which case Section 32 of this bill shall not become operative.

SEC. 37. The Legislature finds and declares that a general statute, within the meaning of Section 16 of Article IV of the California Constitution, cannot be made applicable to the unique financial concerns within the County of Napa that Section 4 of this act is intended to remedy, and that, therefore, this special statute is necessary.

CHAPTER 621

An act to amend Section 6203 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 2, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Section 6203 of the Revenue and Taxation Code is amended to read:

6203. (a) Except as provided by Sections 6292 and 6293, every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state, not exempted under Chapter 3.5 (commencing with Section 6271) or Chapter 4 (commencing with Section 6351), shall, at the time of making the sales or, if the storage, use, or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use, or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the board.

(b) As respects leases constituting sales of tangible personal property, the tax shall be collected from the lessee at the time amounts are paid by the lessee under the lease.

(c) "Retailer engaged in business in this state" as used in this section and Section 6202 means and includes any of the following:

(1) Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business.

(2) Any retailer having any representative, agent, salesperson, canvasser, independent contractor, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of

selling, delivering, installing, assembling, or the taking of orders for any tangible personal property.

(3) As respects a lease, any retailer deriving rentals from a lease of tangible personal property situated in this state.

(4) Any retailer soliciting orders for tangible personal property by means of a telecommunication or television shopping system (which utilizes toll free numbers) which is intended by the retailer to be broadcast by cable television or other means of broadcasting, to consumers located in this state.

(5) Any retailer who, pursuant to a contract with a broadcaster or publisher located in this state, solicits orders for tangible personal property by means of advertising that is disseminated primarily to consumers located in this state and only secondarily to bordering jurisdictions.

(6) (A) Any retailer soliciting orders for tangible personal property by mail if the solicitations are substantial and recurring and if the retailer benefits from any banking, financing, debt collection, telecommunication, or marketing activities occurring in this state or benefits from the location in this state of authorized installation, servicing, or repair facilities.

(B) This paragraph shall become operative upon the enactment of any congressional act that authorizes states to compel the collection of state sales and use taxes by out-of-state retailers.

(7) Any retailer having a franchisee or licensee operating under its trade name if the franchisee or licensee is required to collect the tax under this section.

(8) Any retailer who, pursuant to a contract with a cable television operator located in this state, solicits orders for tangible personal property by means of advertising that is transmitted or distributed over a cable television system in this state.

(9) Notwithstanding Section 7262, a retailer specified in paragraph (4), (5), (6), (7), or (8) above, and not specified in paragraph (1), (2), or (3) above, is a "retailer engaged in business in this state" for the purposes of this part and Part 1.5 (commencing with Section 7200) only.

(d) (1) For purposes of this section, "engaged in business in this state" does not include the taking of orders from customers in this state through a computer telecommunications network located in this state which is not directly or indirectly owned by the retailer when the orders result from the electronic display of products on that same network. The exclusion provided by this subdivision shall apply only to a computer telecommunications network that consists substantially of on-line communications services other than the displaying and taking of orders for products.

(2) This subdivision shall become inoperative upon the earlier of the following dates:

(A) The operative date of provisions of a congressional act that authorize states to compel the collection of state sales and use taxes by out-of-state retailers.

(B) The date five years from the effective date of the act adding this subdivision.

(e) Except as provided in this subdivision, a retailer is not a "retailer engaged in business in this state" under paragraph (2) of subdivision (c) if that retailer's sole physical presence in this state is to engage in convention and trade show activities as described in Section 513(d)(3)(A) of the Internal Revenue Code, and if the retailer, including any of his or her representatives, agents, salespersons, canvassers, independent contractors, or solicitors, does not engage in those convention and trade show activities for more than seven days, in whole or in part, in this state during any 12-month period and did not derive more than ten thousand dollars ($10,000) of gross income from those activities in this state during the prior calendar year. Notwithstanding the preceding sentence, a retailer engaging in convention and trade show activities, as described in Section 513(d)(3)(A) of the Internal Revenue Code, is a "retailer engaged in business in this state," and is liable for collection of the applicable use tax, with respect to any sale of tangible personal property occurring at the convention and trade show activities and with respect to any sale of tangible personal property made pursuant to an order taken at or during those convention and trade show activities.

SEC. 2. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this act.

CHAPTER 622

An act to amend Sections 14523, 14524, 14525, 14526, 14527, 14530.1, 14531, 14536, 65081.1, 65082, 65083, and 65086 of, to add Sections 14529.1, 14529.8, 14529.12, and 14529.15 to, to repeal and add Sections 14520.3, 14529, 65080, and 65086.4 of, and to repeal Sections 14524.5, 14529.01, 14529.2, 14529.6, 14530.5, 14555, 65071, and 65081 of, the Government Code, to amend Sections 99310, 99312, and 99315 of, and to repeal Sections 99315.5, 99315.6, 99318, and 99318.2 of, the Public Utilities Code, and to amend Sections 164.3, 167, 188, and 188.8 of, to amend and repeal Sections 2601, 2602, and 2602.1 of, to add Sections

164.6 and 188.10 to, to repeal and add Sections 163, 164, and 182.5 of, and to repeal Sections 164.2, 164.4, 164.35, 164.50, 164.51, 164.52, 164.55, 164.57, 168, 182.4, 182.8, 188.9, 199, 199.1, 199.2, 199.3, 199.4, 199.6, 199.7, 199.8, 199.9, 199.10, 199.11, and 2600 of, the Streets and Highways Code, relating to transportation.

[Approved by Governor October 2, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Section 14520.3 of the Government Code is repealed.

SEC. 1.1. Section 14520.3 is added to the Government Code, to read:

14520.3. (a) The Legislature, through the enactment of Senate Bill 45 during the 1997–98 Regular Session, intends to establish priorities and processes for the programming and expenditure of state transportation funds that are at the discretion of the Legislature and the Governor.

(b) The department is responsible for the planning, design, construction, maintenance, and operation of the state highway system and Senate Bill 45 is not intended to alter that responsibility.

(c) In addition to other responsibilities established by law, the department is the responsible agency for performing all state highway project components specified in subdivision (b) of Section 14529 of the Government Code except for construction.

(d) The Legislature, through the enactment of this section, intends that nothing in subdivision (b) of Section 14529 of the Government Code or any other provision in the act that added this section to the Government Code shall be construed to expand or restrict the authority or responsibility of the department, as provided by statute or the California Constitution, to perform the components described in subdivision (b) of Section 14529 of the Government Code on state highways.

SEC. 2. Section 14523 of the Government Code is amended to read:

14523. The commission may prepare an independent evaluation of the department's budget regarding the adequacy of funding levels and the relative needs of program categories as defined in Section 167 of the Streets and Highways Code and submit its recommendations to the Legislature not later than April 1 of each year. The report shall reflect the commission's judgment regarding the overall funding levels for each program category and shall not duplicate the item-by-item analysis conducted by the Legislative Analyst.

SEC. 3. Section 14524 of the Government Code is amended to read:

14524. (a) Not later than January 5, 1998, and July 15 of each odd-numbered year thereafter, the department shall submit to the commission a four-year estimate pursuant to Section 164 of the Streets and Highways Code, in annual increments, of all federal and state funds reasonably expected to be available during the following four fiscal years.

(b) The estimate shall specify the amount that may be programmed in each county for regional improvement programs pursuant to paragraph (2) of subdivision (a) of Section 164 of the Streets and Highways Code and shall identify any statutory restriction on the use of particular funds.

(c) For the purpose of estimating revenues, the department shall assume that there will be no changes in existing state and federal statutes.

(d) The method by which the estimate is determined shall be determined by the commission, in consultation with the department, transportation planning agencies, and county transportation commissions.

SEC. 3.5. Section 14524 of the Government Code is amended to read:

14524. (a) Not later than January 5, 1998, and July 15 of each odd-numbered year thereafter, the department shall submit to the commission a four-year estimate pursuant to Section 164 of the Streets and Highways Code, in annual increments, of all federal and state funds reasonably expected to be available during the following four fiscal years.

(b) The estimate shall specify the amount that may be programmed in each county for regional improvement programs pursuant to paragraph (2) of subdivision (a) of Section 164 of the Streets and Highways Code, and for the California Transportation Finance Bank program established in Division 2 (commencing with Section 64000) of Title 6.7, and shall identify any statutory restriction on the use of particular funds.

(c) For the purpose of estimating revenues, the department shall assume that there will be no changes in existing state and federal statutes.

(d) The method by which the estimate is determined shall be determined by the commission, in consultation with the department, transportation planning agencies, and county transportation commissions.

SEC. 4. Section 14524.5 of the Government Code is repealed.

SEC. 5. Section 14525 of the Government Code is amended to read:

14525. (a) Not later than January 5, 1998, and August 15 of each odd-numbered year thereafter, the commission shall adopt a four-year estimate pursuant to Section 164 of the Streets and Highways Code, in annual increments, of all state and federal funds

reasonably expected to be available during the following four fiscal years.

(b) The estimate shall specify the amount that may be programmed in each county for regional improvement programs under paragraph (2) of subdivision (a) of Section 164 of the Streets and Highways Code and shall identify any statutory restriction on the use of particular funds.

(c) For the purpose of estimating revenues, the commission shall assume that there will be no change in existing state and federal statutes.

(d) If the commission finds that legislation pending before the Legislature or the United States Congress may have a significant impact on the fund estimate, the commission may postpone the adoption of the fund estimate for no more than 90 days. Prior to March 1 of each even-numbered year, the commission may amend the estimate following consultation with the department, transportation planning agencies, and county transportation commissions to account for unexpected revenues or other unforeseen circumstances. In the event the fund estimate is amended, the commission shall extend the dates for the submittal of improvement programs as specified in Sections 14526 and 14527 and for the adoption of the state transportation improvement program pursuant to Section 14529.

SEC. 5.5. Section 14525 of the Government Code is amended to read:

14525. (a) Not later than January 5, 1998, and August 15 of each odd-numbered year thereafter, the commission shall adopt a four-year estimate pursuant to Section 164 of the Streets and Highways Code, in annual increments, of all state and federal funds reasonably expected to be available during the following four fiscal years, and for the California Transportation Finance Bank program established by Division 2 (commencing with Section 64000) of Title 6.7.

(b) The estimate shall specify the amount that may be programmed in each county for regional improvement programs under paragraph (2) of subdivision (a) of Section 164 of the Streets and Highways Code and shall identify any statutory restriction on the use of particular funds.

(c) For the purpose of estimating revenues, the commission shall assume that there will be no change in existing state and federal statutes.

(d) If the commission finds that legislation pending before the Legislature or the United States Congress may have a significant impact on the fund estimate, the commission may postpone the adoption of the fund estimate for no more than 90 days. Prior to March 1 of each even-numbered year, the commission may amend the estimate following consultation with the department, transportation planning agencies, and county transportation

commissions to account for unexpected revenues or other unforeseen circumstances. If the fund estimate is amended, the commission shall extend the dates for the submittal of improvement programs as specified in Sections 14526 and 14527 and for the adoption of the state transportation improvement program pursuant to Section 14529.

SEC. 6. Section 14526 of the Government Code is amended to read:

14526. (a) Not later than March 1, 1998, and December 15 of each odd-numbered year thereafter, and after consulting with the transportation planning agencies, county transportation commissions, and transportation authorities, the department shall submit to the commission its interregional improvement program consisting of all of the following:

(1) Projects to improve state highways, pursuant to subdivision (b) of Section 164 of the Streets and Highways Code.

(2) Projects to improve the intercity passenger rail system.

(3) Projects to improve interregional movement of people, vehicles, and goods.

(b) Projects may not be included in the interregional improvement program without a project study report or major investment study.

(c) Major projects shall include current costs updated as of November 1 of the year of submittal and escalated to the appropriate year, and shall be consistent with, and provide the information required in, subdivision (b) of Section 14529.

(d) Projects included in the interregional improvement program shall be consistent with the adopted regional transportation plan.

SEC. 7. Section 14527 of the Government Code is amended to read:

14527. (a) After consulting with the department, the regional transportation planning agencies and county transportation commissions shall adopt and submit to the commission and the department, not later than March 1, 1998, and December 15 of each odd-numbered year thereafter, a four-year regional transportation improvement program in conformance with Section 65082. In counties where a county transportation commission or authority has been created pursuant to Chapter 2 (commencing with Section 130050) of Division 12 of the Public Utilities Code, the commission or the authority shall adopt and submit the county transportation improvement program, in conformance with Sections 130303 and 130304 of that code, to the multicounty designated transportation planning agency. Other information, including a program for expenditure of local or federal funds, may be submitted for information purposes with the program, but only at the discretion of the transportation planning agencies or the county transportation commissions.

(b) The regional transportation improvement program shall include all projects to be funded with regional improvement funds under paragraph (2) of subdivision (a) of Section 164 of the Streets and Highways Code. The regional programs shall be limited to projects to be funded in whole or in part with regional improvement funds which shall include all projects to receive allocations by the commission during the following four fiscal years. For each project, the total expenditure for each project component and the total amount of commission allocation and the year of allocation shall be stated. The total cost of projects to be funded with regional improvement funds shall not exceed the amount specified in the fund estimate made by the commission pursuant to Section 14525.

(c) The regional transportation planning agencies and county transportation commissions may recommend projects to improve state highways with interregional improvement funds pursuant to subdivision (b) of Section 164 of the Streets and Highways Code. The recommendations shall be separate and distinct from the regional transportation program. A project recommended for funding pursuant to this subdivision shall constitute a usable segment and shall not be a condition for inclusion of other projects in the regional transportation improvement program.

(d) Major projects shall include current costs updated as of November 1 of the year of submittal and escalated to the appropriate year, and shall be consistent with, and provide the information required in, subdivision (b) of Section 14529.

(f) The regional transportation improvement program may not change the project delivery milestone date of any project as shown in the prior adopted state transportation improvement program without the consent of the department or other agency responsible for the project's delivery.

(g) Projects may not be included in the regional transportation improvement program without a complete project study report or, for a project that is not on a state highway, a project study report equivalent or major investment study.

(h) The transportation planning agencies and county transportation commissions may request and receive an amount not to exceed one-half of 1 percent of their regional improvement fund expenditures for the purposes of project planning, programming, and monitoring. A transportation planning agency or county transportation commission not receiving federal metropolitan planning funds may request and receive an amount not to exceed 2 percent of its regional improvement fund expenditures for the purposes of project planning, programming, and monitoring.

SEC. 8. Section 14529 of the Government Code is repealed.

SEC. 9. Section 14529 is added to the Government Code, to read:

14529. (a) The state transportation improvement program shall include a listing of all capital improvement projects that are expected to receive an allocation of state transportation funds under Section

164 of the Streets and Highways Code, including revenues from transportation bond acts, from the commission during the following four fiscal years. It shall include, and be limited to, the projects to be funded with the following:

(1) Interregional improvement funds.

(2) Regional improvement funds.

(b) For each project, the program shall specify the allocation or expenditure amount and the allocation or expenditure year for each of the following project components:

(1) Completion of all permits and environmental studies.

(2) Preparation of plans, specifications, and estimates.

(3) The acquisition of rights-of-way.

(4) Construction and construction management and engineering, including surveys and inspection.

(c) Funding for right-of-way acquisition and construction for a project may be included in the program only if the commission makes a finding that the sponsoring agency will complete the environmental process and can proceed with right-of-way acquisition or construction within the four-year period. No allocation for right-of-way acquisition or construction shall be made until the completion of the environmental studies and the selection of a preferred alternative.

(d) The commission shall adopt and submit to the Legislature and the Governor, not later than June 1, 1998, and April 1 of each even-numbered year thereafter, a state transportation improvement program. The program shall cover a period of four years, beginning July 1 of the year it is adopted, and shall be a statement of intent by the commission for the allocation or expenditure of funds during those four years. The program shall include projects which are expected to receive funds prior to July 1 of the year of adoption, but for which the commission has not yet allocated funds.

(e) The projects included in the adopted state transportation improvement program shall be limited to those projects submitted or recommended pursuant to Sections 14526 and 14527. The total amount programmed in each fiscal year for each program category shall not exceed the amount specified in the fund estimate adopted under Section 14525.

(f) The state transportation improvement program is a resource management document to assist the state and local entities to plan and implement transportation improvements and to utilize available resources in a cost-effective manner. It is a document for each county and each region to declare their intent to use available state and federal funds in a timely and cost-effective manner.

(g) Prior to the adoption of the state transportation improvement program, the commission shall hold not less than one hearing in northern California and one hearing in southern California to reconcile any objections by any county or regional agency to the

department's program or the department's objections to any regional program.

(h) The commission shall incorporate projects that are included in the regional improvement program and are to be funded with regional improvement funds, unless the commission finds that the regional transportation improvement program is not consistent with the guidelines adopted by the commission or is not a cost-effective expenditure of state funds, in which case the commission may reject the regional transportation improvement program in its entirety. The finding shall be based on an objective analysis, including, but not limited to, travel forecast, cost, and air quality. The commission shall hold a public hearing in the affected county or region prior to rejecting the program, or not later than 60 days after rejecting the program. When a regional transportation improvement program is rejected, the regional entity may submit a new regional transportation improvement program for inclusion in the state transportation improvement program. The commission shall not reject a regional transportation improvement program unless, not later than 60 days after the date it received the program, it provided notice to the affected agency that specified the factual basis for its proposed action.

(i) A project may be funded with more than one of the program categories listed in Section 164 of the Streets and Highways Code.

(j) Notwithstanding any other provision of law, no local or regional matching funds shall be required for projects that are included in the state transportation improvement program.

(k) The commission may include a project recommended by a regional transportation planning agency or county transportation commission pursuant to subdivision (c) of Section 14527, if the commission makes a finding, based on an objective analysis, that the recommended project is more cost-effective than a project submitted by the department pursuant to Section 14526.

SEC. 10. Section 14529.01 of the Government Code is repealed.

SEC. 11. Section 14529.1 is added to the Government Code, to read:

14529.1. The commission shall establish guidelines for the allocation of funds to an entity for a project to verify that the entity has the resources and capabilities to implement the project in a timely manner and may establish a process for monitoring the progress being made and proper use of funds. The guidelines and process shall be kept to the minimum needed to protect state funds and provide for a timely use of those funds. The commission shall request that the entity receiving funds accept an audit of funds allocated to it by the commission if an audit is deemed necessary.

SEC. 12. Section 14529.2 of the Government Code is repealed.

SEC. 13. Section 14529.6 of the Government Code is repealed.

SEC. 14. Section 14529.8 is added to the Government Code, to read:

14529.8. (a) Funds may be allocated by the commission for each project element during the fiscal year that is identified in the state transportation improvement program and the funds shall be available for expenditure during that fiscal year and the following two fiscal years. Any funds not allocated, or allocated but not encumbered, during the period specified in this section, shall remain in the account, or be returned to the account, as the case may be.

(b) Upon a finding that an unforeseen and extraordinary circumstance beyond the control of the responsible agency has occurred that justifies an extension, the commission may extend the deadlines specified in subdivision (a). The deadline extensions shall not exceed the period of delay directly attributed to the extraordinary circumstance and in no event be more than 20 months. The commission shall not grant more than one extension.

SEC. 15. Section 14529.12 is added to the Government Code, to read:

14529.12. (a) The department and the regional planning agencies shall consult and seek consensus on state highway projects to be proposed for inclusion in the state transportation improvement program under Sections 14526 and 14527.

(b) Agreements between the state and transportation planning agencies or county transportation commissions relating to program approvals or federal or state fund transfers and the expenditure of funds pursuant to those agreements shall comply with all applicable federal and state laws and regulations and be subject to the administrative operating procedures set forth in Federal Office of Management and Budget Circulars A-87, A-102, and A-128, but not to any other state agency procedures or requirements.

SEC. 16. Section 14529.15 is added to the Government Code, to read:

14529.15. (a) The commission shall make a report to the Legislature on or before February 1, 1999, and on or before February 1, 2001, assessing the relative success of the provisions of Senate Bill 45, as enacted during the 1997–98 Regular Session, in achieving the Legislature's intent for reform of the state transportation improvement program, and assessing program delivery, expenditure of funds at both regional and statewide levels, and program performance.

(b) The Legislature intends that the 1998 State Transportation Improvement Program conform with the requirements of Senate Bill 45, as enacted during the 1997–98 Regular Session, to the maximum degree feasible, taking into account the limited time allowed between enactment of that bill and adoption of that program. The commission shall comply fully with all procedures and requirements of Senate Bill 45, as enacted during the 1997–98 Regular Session, in the preparation and adoption of the subsequent state transportation improvement programs.

(c) The 1998 State Transportation Improvement Program shall cover a period of six years as a transition into a four-year programming period.

SEC. 17. Section 14530.1 of the Government Code is amended to read:

14530.1. (a) The department, in cooperation with the commission, transportation planning agencies, and county transportation commissions and local governments, shall develop guidelines for the development of the state transportation improvement program and the incorporation of projects into the state transportation improvement program.

(b) The guidelines shall include, but not be limited to, all of the following:

(1) Standards for project deliverability.

(2) Standards for identifying projects and project components.

(3) Standards for cost estimating.

(4) Programming methods for increases and schedule changes.

(5) Objective criteria for measuring system performance and cost-effectiveness of candidate projects.

(c) The guidelines shall be submitted to the commission by September 15, 1998. After conducting at least one hearing in northern California and one in southern California, the commission shall adopt the guidelines by December 31, 1998.

(d) The guidelines shall be the complete and full statement of the policy, standards, and criteria that the commission intends to use in selecting projects to be included in the state transportation improvement program.

(e) The commission may amend the adopted guidelines after conducting at least one public hearing. The commission shall make a reasonable effort to adopt the amended guidelines prior to its adoption of the fund estimate pursuant to Section 14525. In no event shall the adopted guidelines be amended, or otherwise revised, modified, or altered during the period commencing 30 days after the adoption of the fund estimate pursuant to Section 14525 and before the adoption of the state transportation improvement program pursuant to Section 14529.

SEC. 18. Section 14530.5 of the Government Code is repealed.

SEC. 19. Section 14531 of the Government Code is amended to read:

14531. (a) The commission may amend the state transportation improvement program if the amendment meets both of the following conditions:

(1) The request for the amendment is made by the entity that submitted the project or projects that are in the program and are to be changed by the amendment.

(2) The total amount programmed in each county for regional improvements does not exceed the county's share prior to the amendment, or the total amount programmed in each county is

treated as an adjustment to the share pursuant to Section 188.10 of the Streets and Highways Code.

(b) Public notice of the proposed amendments to the program or the plan shall be made at least 30 days before the commission takes formal action on the proposed amendments. The notice shall include the text and complete description of the proposed amendments.

SEC. 20. Section 14536 of the Government Code is amended to read:

14536. (a) The annual report shall include an explanation and summary of major policies and decisions adopted by the commission during the previously completed state and federal fiscal year, with an explanation of any changes in policy associated with the performance of its duties and responsibilities over the past year.

(b) The annual report may also include a discussion of any significant upcoming transportation issues anticipated to be of concern to the public and the Legislature.

SEC. 21. Section 14555 of the Government Code is repealed.

SEC. 22. Section 65071 of the Government Code is repealed.

SEC. 23. Section 65080 of the Government Code is repealed.

SEC. 24. Section 65080 is added to the Government Code, to read:

65080. (a) Each transportation planning agency designated under Section 29532 or 29532.1 shall prepare and adopt a regional transportation plan directed at achieving a coordinated and balanced regional transportation system, including, but not limited to, mass transportation, highway, railroad, maritime, bicycle, pedestrian, goods movement, and aviation facilities and services. The plan shall be action-oriented and pragmatic, considering both the short-term and long-term future, and shall present clear, concise policy guidance to local and state officials. The regional transportation plan shall consider factors specified in Section 134 of Title 23 of the United States Code. Each transportation planning agency shall consider and incorporate, as appropriate, the transportation plans of cities, counties, districts, private organizations, and state and federal agencies.

(b) The regional transportation plan shall include all of the following:

(1) A policy element that describes the transportation issues in the region, identifies and quantifies regional needs, and describes the desired short-range and long-range transportation goals, and pragmatic objective and policy statements. The objective and policy statements shall be consistent with the funding estimates of the financial element.

(2) An action element that describes the programs and actions necessary to implement the plan and assigns implementation responsibilities. The action element may describe all projects proposed for development during the 20-year life of the plan.

The action element shall consider congestion management programming activities carried out within the region.

(3) A financial element that summarizes the cost of plan implementation constrained by a realistic projection of available revenues. The financial element shall also contain recommendations for allocation of funds. A county transportation commission created pursuant to Section 130000 of the Public Utilities Code shall be responsible for recommending projects to be funded with regional improvement funds, if the project is consistent with the regional transportation plan. The first four years of the financial element shall be based on the four-year estimate of funds developed pursuant to Section 14524. The financial element may recommend the development of specified new sources of revenue, consistent with the policy element and action element.

(c) Each transportation planning agency shall adopt and submit, biennially, an updated regional transportation plan to the California Transportation Commission and the Department of Transportation. The plan shall be consistent with federal planning and programming requirements. A transportation planning agency that does not contain an urbanized area may at its option adopt and submit a regional transportation plan once every four years beginning with December 1, 1997. Prior to adoption of the regional transportation plan, a public hearing shall be held, after the giving of notice of the hearing by publication in the affected county or counties pursuant to Section 6061.

SEC. 25. Section 65081 of the Government Code is repealed.

SEC. 26. Section 65081.1 of the Government Code is amended to read:

65081.1. (a) After consultation with other regional and local transportation agencies, each transportation planning agency whose planning area includes a primary air carrier airport shall, in conjunction with its preparation of an updated regional transportation plan, include an airport ground access improvement program.

(b) The program shall address the development and extension of mass transit systems, including passenger rail service, major arterial and highway widening and extension projects, and any other ground access improvement projects the planning agency deems appropriate.

(c) Highest consideration shall be given to mass transit for airport access improvement projects in the program.

(d) If federal funds are not available to a transportation planning agency for the costs of preparing or updating an airport ground access improvement program, the agency may charge the operators of primary air carrier airports within its planning area for the direct costs of preparing and updating the program. An airport operator against whom charges are imposed pursuant to this subdivision shall pay the amount of those charges to the transportation planning agency.

SEC. 27. Section 65082 of the Government Code is amended to read:

65082. (a) A four-year regional transportation improvement program shall be prepared, adopted, and submitted to the California Transportation Commission on or before January 5, 1998, and December 15 of each odd-numbered year thereafter, updated every two years, pursuant to Sections 65080 and 65080.5 and the guidelines adopted pursuant to Section 14530.1, to include regional transportation improvement projects and programs proposed to be funded, in whole or in part, in the state transportation improvement program.

Major projects shall include current costs updated as of November 1 of the year of submittal and escalated to the appropriate year, and be listed by relative priority, taking into account need, delivery milestone dates, as defined in Section 14525.5, and the availability of funding.

(b) Except for those counties that do not prepare a congestion management program pursuant to Section 65088.3, congestion management programs adopted pursuant to Section 65089 shall be incorporated into the regional transportation improvement program submitted to the commission by December 15 of each odd-numbered year.

(c) Local projects not included in a congestion management program shall not be included in the regional transportation improvement program. Projects and programs adopted pursuant to subdivision (a) shall be consistent with the capital improvement program adopted pursuant to paragraph (5) of subdivision (b) of Section 65089, and the guidelines adopted pursuant to Section 14530.1.

(d) Other projects may be included in the regional transportation improvement program if listed separately.

(e) Unless a county not containing urbanized areas of over 50,000 population notifies the Department of Transportation by July 1 that it intends to prepare a regional transportation improvement program for that county, the department shall, in consultation with the affected local agencies, prepare the program for all counties for which it prepares a regional transportation plan.

(f) The requirements for incorporating a congestion management program into a regional choice program specified in this section do not apply in those counties that do not prepare a congestion management program in accordance with Section 65088.3.

SEC. 28. Section 65083 of the Government Code is amended to read:

65083. As part of implementation of the demonstration program established pursuant to Section 14045 of the Government Code, the regional transportation planning agency preparing the four-year regional transportation improvement program pursuant to Section 65082 shall consider those exclusive mass transit guideway projects

where the applicant and the local entity responsible for land use decisions have entered into a binding agreement to promote high density residential development within one-half mile of a mass transit guideway station. Any project selected by the agency which is located in a demonstration site shall be considered for inclusion in the regional transportation improvement program. This section shall not preclude the agency from applying the criteria for making awards which may be required or permitted pursuant to other provisions of law.

SEC. 29. Section 65086 of the Government Code is amended to read:

65086. The Department of Transportation, in consultation with transportation planning agencies, county transportation commissions, counties, and cities, shall carry out long-term state highway system planning to identify future highway improvements.

SEC. 30. Section 65086.4 of the Government Code is repealed.

SEC. 31. Section 65086.4 is added to the Government Code, to read:

65086.4. Projects on the state highway system shall comply with applicable state and federal standards to ensure systemwide consistency with operational, safety, and maintenance needs. The department may approve exceptions to this requirement that it determines to be appropriate.

SEC. 32. Section 99310 of the Public Utilities Code is amended to read:

99310. (a) The Transportation Planning and Development Account in the State Transportation Fund, hereafter referred to as the "account" in this article, is hereby continued in existence as the Public Transportation Account in the fund.

(b) Any reference in any law or regulation to the Transportation Planning and Development Account in the State Transportation Fund is a reference to the Public Transportation Account.

SEC. 33. Section 99312 of the Public Utilities Code is amended to read:

99312. From the funds transferred to the account pursuant to Section 7102 of the Revenue and Taxation Code, the Legislature shall appropriate funds for the following purposes:

(a) To the department, 50 percent for purposes of Section 99315.

(b) To the Controller, 25 percent for allocation to transportation planning agencies, county transportation commissions, and the San Diego Metropolitan Transit Development Board pursuant to Section 99314.

(c) To the Controller, 25 percent for allocation to transportation agencies, county transportation commissions, and the San Diego Metropolitan Transit Development Board for purposes of Section 99313.

SEC. 34. Section 99315 of the Public Utilities Code is amended to read:

99315. Funds made available pursuant to subdivision (a) of Section 99312, shall be available for all of the following purposes:

(a) Bus and passenger rail services pursuant to Sections 14035, 14035.5, and 14038 of the Government Code.

(b) Funding of public transit capital improvement projects in the state transportation improvement program, pursuant to Section 14529 of the Government Code.

(c) To the department for its planning activities not payable from the State Highway Account in the State Transportation Fund, its mass transportation responsibilities, and its assistance in regional transportation planning.

(d) To the director for allocation to the Institute of Transportation Studies of the University of California for training and research in public transportation systems engineering and management and coordination with other transportation modes.

(e) To the commission for its activities not payable from the State Highway Account.

(f) To the Public Utilities Commission for its passenger rail safety responsibilities specified in statute on commuter rail, intercity rail, and urban rail transit lines.

SEC. 35. Section 99315.5 of the Public Utilities Code is repealed.

SEC. 36. Section 99315.6 of the Public Utilities Code is repealed.

SEC. 37. Section 99318 of the Public Utilities Code is repealed.

SEC. 38. Section 99318.2 of the Public Utilities Code is repealed.

SEC. 39. Section 163 of the Streets and Highways Code is repealed.

SEC. 40. Section 163 is added to the Streets and Highways Code, to read:

163. The Legislature, through the enactment of this section, intends to establish a policy for the use of all transportation funds that are available to the state, including the State Highway Account, the Public Transportation Account, and federal funds. The department and the commission shall prepare fund estimates pursuant to Sections 14524 and 14525 of the Government Code based on the following:

(a) Annual expenditures for the administration of the department shall be the same as the most recent Budget Act, adjusted for inflation.

(b) Annual expenditures for the maintenance and operation of the state highway system shall be the same as the most recent Budget Act, adjusted for inflation and inventory.

(c) Annual expenditure for the rehabilitation of the state highway system shall be the same as the most recent Budget Act, or, if a long-range rehabilitation plan has been enacted pursuant to Section 164.6, it shall be based on planned expenditures in a long-range rehabilitation plan prepared by the department pursuant to Section 164.6.

(d) Annual expenditures for local assistance shall be the amount required to fund local assistance programs required by state or

federal law or regulations, including, but not limited to, railroad grade crossing maintenance, bicycle lane account, congestion mitigation and air quality, regional surface transportation programs, local highway bridge replacement and rehabilitation, local seismic retrofit, local hazard elimination and safety, local federal demonstration projects, and local emergency relief.

(e) After deducting expenditures for administration, operation, maintenance, local assistance, safety, and rehabilitation pursuant to subdivisions (a), (b), (c), and (d), and for expenditures pursuant to Section 164.56, the remaining funds shall be available for capital improvement projects to be programmed in the state transportation improvement program.

SEC. 41. Section 164 of the Streets and Highways Code is repealed.

SEC. 42. Section 164 is added to the Streets and Highways Code, to read:

164. (a) Funds made available for transportation capital improvement projects under subdivision (e) of Section 163 shall be programmed and expended for the following program categories:

(1) Twenty-five percent for interregional improvements.

(2) Seventy-five percent for regional improvements.

(b) Sixty percent of the funds available for interregional improvements under paragraph (1) of subdivision (a) shall be programmed and expended for improvements to state highways that are specified in Sections 164.10 to 164.20, inclusive, and that are outside the boundaries of an urbanized area with a population of more than 50,000, and for intercity rail improvements.

(c) Not less than 15 percent of the amount of funds programmed under subdivision (b) shall be programmed for intercity rail improvement projects, including separation of grade projects.

(d) Funds made available under paragraph (1) of subdivision (a) shall be used for transportation improvement projects that are needed to facilitate interregional movement of people and goods. The projects may include state highway, intercity passenger rail, mass transit guideway, or grade separation projects.

(e) Funds made available under paragraph (2) of subdivision (a) shall be used for transportation improvement projects that are needed to improve transportation within the region. The projects may include, but shall not be limited to, improving state highways, local roads, public transit, intercity rail, pedestrian, and bicycle facilities, and grade separation, transportation system management, transportation demand management, soundwall projects, intermodal facilities, and safety.

SEC. 43. Section 164.2 of the Streets and Highways Code is repealed.

SEC. 44. Section 164.3 of the Streets and Highways Code is amended to read:

164.3. The interregional road system shall include, and shall be limited to, those routes that are specified in Sections 164.10 to 164.20, inclusive.

SEC. 45. Section 164.4 of the Streets and Highways Code is repealed.

SEC. 46. Section 164.6 is added to the Streets and Highways Code, to read:

164.6. (a) The department shall prepare a 10-year state rehabilitation plan for the rehabilitation and reconstruction, or the combination thereof, of all state highways and bridges owned by the state. The plan shall identify all rehabilitation needs for the 10-year period beginning on July 1, 1998, and ending on June 30, 2008, and shall include a schedule of improvements to complete all needed rehabilitation not later than June 30, 2008. The plan shall be updated every two years beginning in 2000. The plan shall include specific milestones and quantifiable accomplishments, such as miles of highways to be repaved and number of bridges to be retrofitted. The plan shall contain strategies to control cost and improve the efficiency of the program, and include a cost estimate for at least the first four years of the program.

(b) The plan shall be submitted to the commission for review and comments and shall be transmitted to the Governor and the Legislature not later than May 1, 1998.

(c) The plan shall be the basis for the department's budget request and for the adoption of fund estimates pursuant to Section 163.

SEC. 47. Section 164.35 of the Streets and Highways Code is repealed.

SEC. 48. Section 164.50 of the Streets and Highways Code is repealed.

SEC. 49. Section 164.51 of the Streets and Highways Code is repealed.

SEC. 50. Section 164.52 of the Streets and Highways Code is repealed.

SEC. 51. Section 164.55 of the Streets and Highways Code is repealed.

SEC. 52. Section 164.57 of the Streets and Highways Code is repealed.

SEC. 53. Section 167 of the Streets and Highways Code is amended to read:

167. (a) Funds in the State Highway Account in the State Transportation Fund shall be programmed, budgeted subject to Section 163, and expended to maximize the use of federal funds and shall be based on the following sequence of priorities:

(1) Operation, maintenance, and rehabilitation of the state highway system.

(2) Safety improvements where physical changes, other than adding additional lanes, would reduce fatalities and the number and severity of injuries.

(3) Transportation capital improvements that expand capacity or reduce congestion, or do both.

(4) Environmental enhancement and mitigation programs.

(b) With respect to the funds in the State Highway Account, in the Public Transportation Account, and in the Passenger Rail Bond Fund, the proposed budget shall be organized on a program basis. The proposed budget shall list the proposed expenditures for the transportation program under the following program elements:

(1) Administration.

(2) Program development.

(3) Maintenance.

(4) State highway operation and protection.

(5) Local assistance.

(6) Interregional improvements.

(7) Regional improvements.

(8) Environmental enhancement and mitigation programs.

(c) State operations expenditure amounts of the department for interregional and regional transportation improvement projects shall be listed as required by subdivision (b) of Section 14529 of the Government Code, but those amounts other than those for the acquisition of rights-of-way and construction shall not be subject to allocation by the commission.

(d) To align the annual budget with the adopted state transportation improvement program, the department may submit to the Department of Finance revised capital outlay support and capital outlay budget estimates as part of its May revision process.

(e) The budget shall not include specific appropriations for specific transportation improvement projects, and the Legislature shall not enact legislation containing specific individual transportation projects.

(f) The basis for defining major and minor capital outlay projects shall be established by the commission.

(g) The Legislative Analyst shall prepare an analysis of the proposed expenditures for each program element as a part of the budget analysis.

SEC. 54. Section 168 of the Streets and Highways Code is repealed.

SEC. 55. Section 182.4 of the Streets and Highways Code is repealed.

SEC. 56. Section 182.5 of the Streets and Highways Code is repealed.

SEC. 57. Section 182.5 is added to the Streets and Highways Code, to read:

182.5. (a) It is the intent of the Legislature that the transition to the new programs and procedures established in the bill enacting this section shall be fair and equitable and minimize disruptions in the delivery of projects. With specific reference to the transition from county minimums to county shares for regional improvement, no

project should be counted twice, no project that would be counted under either the old or new procedures should escape being counted in the transition, shares should be sufficient to fund projects programmed in the 1996 State Transportation Improvement Program for the same period, no incentive or reward should be provided for delaying a project, and no incentive or reward should be provided for allocating funds to a project earlier than the year in which the funds are needed for the project.

(b) At the end of the fiscal year ending June 30, 1998, the county minimums and county minimum deficits shall be recalculated under the law as it existed prior to the enactment of the bill adding this section.

(c) Notwithstanding Section 164, there shall be set aside sufficient funding for every project that is included in the 1996 State Transportation Improvement Program. This funding shall be set aside in the fund estimate prior to and in addition to the distribution of funding between programs pursuant to Section 164.

(d) The amount of the cumulative county minimum deficit calculated for any county pursuant to subdivision (b) shall be carried forward as a county share for the 1998 State Transportation Improvement Program, prior to and in addition to the computation of county shares pursuant to subdivision (a) of Section 188.8.

(e) The commission shall not allocate funds for any project unless the commission has programmed the state transportation improvement program in a manner that complies with the requirements of Sections 188, 188.8, and 188.10.

(f) Notwithstanding subdivision (a), for a county within the region defined by Section 66502 of the Government Code where funds were traded in the 1996 State Transportation Improvement Program to another county in that region, the county share for that county for the 1998 State Transportation Improvement Program shall be increased by the amount of the trade in the 1996 State Transportation Improvement Program, as if the share were a county minimum deficit under subdivision (d).

(g) In adopting the 1998 State Transportation Improvement Program, the commission shall, at a minimum, fund all intercity rail projects that are included in the adopted 1996 State Transportation Improvement Program. The amount of funds programmed for each project shall not be less than the amount in the 1996 State Transportation Improvement Program.

(h) The commission, after consulting with the department and the regional planning agencies, shall adopt interim guidelines and procedures relative to fund estimates and project selection in a manner that the first state transportation improvement program, pursuant to the provisions of the act adding this section, is adopted not later than June 1, 1998.

SEC. 58. Section 182.8 of the Streets and Highways Code is repealed.

SEC. 59. Section 188 of the Streets and Highways Code is amended to read:

188. (a) All federal and state funds to be allocated by the commission, or expended by the department, for transportation improvements under Section 164, except for purposes of subdivisions (b) and (c) of that section, shall be programmed during the period commencing on July 1, 1997, and ending on June 30, 2004, and for each four-year period thereafter, 40 percent in County Group No. 1 and 60 percent in County Group No. 2.

(b) This section shall be known and may be cited as the Barnes-Mills-Walsh formula.

SEC. 60. Section 188.8 of the Streets and Highways Code is amended to read:

188.8. (a) From the funds programmed pursuant to Section 188 for regional improvement projects, the commission shall approve programs and program amendments, so that funding is distributed to each county of County Group No. 1 and in each county of County Group No. 2 during the county share periods commencing July 1, 1997, and ending June 30, 2004, and each period of four years thereafter. The amount shall be computed as follows:

(1) The commission shall compute, for the county share periods all of the money to be expended for regional improvement projects in County Groups Nos. 1 and 2, respectively, as provided in Section 188.

(2) From the amount computed for County Group No. 1 in paragraph (1) for the county share periods the commission shall determine the amount of programming for each county in the group based on a formula which is based 75 percent on the population of the county to the total population of County Group No. 1 and 25 percent on state highway miles in the county to the total state highway miles in County Group No. 1.

(3) From the amount computed for County Group No. 2 in paragraph (1) for the county share periods the commission shall determine the amount of programming for each county in the group based on a formula which is based 75 percent on the population of the county to the total population of County Group No. 2 and 25 percent on state highway miles in the county to the total state highway miles in County Group No. 2.

(b) Notwithstanding subdivision (a), that portion of the county population and state highway mileage in El Dorado and Placer Counties that is included within the jurisdiction of the Tahoe Regional Planning Agency shall be counted separately toward the area under the jurisdiction of the Tahoe Regional Transportation Agency and shall not be included in El Dorado and Placer Counties. The commission shall approve programs, program amendments, and fund reservations for the area under the jurisdiction of the Tahoe Regional Transportation Agency which shall be calculated using the formula described in paragraph (2) of subdivision (a).

(c) A transportation planning agency designated pursuant to Section 29532 of the Government Code, or a county transportation commission created by Division 12 (commencing with Section 130000) of the Public Utilities Code, may adopt a resolution to pool its county share programming with any county or counties adopting similar resolutions to consolidate its county shares for two consecutive county share periods into a single share covering both periods. A multicounty transportation planning agency with a population of less than three million may also adopt a resolution to pool the share of any county or counties within its region. The resolution shall provide for pooling the county share programming in any of the pooling counties for the new single share period and shall be submitted to the commission not later than May 1 immediately preceding the commencement of the county share period.

(d) For the purposes of this section, funds programmed shall include the following costs pursuant to subdivision (b) of Section 14529 of the Government Code:

(1) The amounts programmed or budgeted for both components of project development in the original programmed year.

(2) The amount programmed for right-of-way in the year programmed in the most recent state transportation improvement program. If the final estimate is greater than 120 percent of the amount originally programmed, the amount shall be adjusted for final expenditure estimates at the time of right-of-way certification.

(3) The engineer's final estimate of project costs, including construction engineering, presented to the commission for approval pursuant to Section 14533 of the Government Code in the year programmed in the most recent state transportation improvement program.

(4) Project costs shown in the program, as amended, where project allocations have not yet been approved by the commission, escalated to the date of scheduled project delivery.

(e) Project costs shall not be changed to reflect any of the following:

(1) Differences that are within 20 percent of the amount programmed for actual project development cost.

(2) Actual right-of-way purchase costs.

(3) Construction contract award amounts.

(4) Changes in construction expenditures.

(f) For the purposes of this section, the population in each county is that determined by the last preceding federal census, or a subsequent census validated by the Population Research Unit of the Department of Finance, at the beginning of each county share period.

(g) For the purposes of this section, "state highway miles" means the miles of state highways open to vehicular traffic at the beginning of each county share period.

(h) It is the intent of the Legislature that there is to be flexibility in programming under this section and Section 188 so that, while ensuring that each county will receive an equitable share of state transportation improvement program funding, the types of projects selected and the programs from which they are funded may vary from county to county.

(i) Commencing with the four-year period commencing on July 1, 2004, individual county share shortfalls and surpluses at the end of each four-year period, if any, shall be carried forward and credited or debited to the following four years.

(j) The commission, with the consent of the department, may consider programming projects in the state transportation improvement program in a region with a population of not more than 1,000,000 at a level higher or lower than a county share, when the regional agency either asks to reserve part or all of its share until a future programming year, to build up a larger share for a higher cost project, or asks to advance an amount of the share, in an amount not to exceed 200 percent of its current share, for a larger project, to be deducted from shares for future programming years. After consulting with the department, the commission may adjust the level of programming in the regional program in the affected region against the level of interregional programming in the improvement program to accomplish the reservation or advancement, for the current state transportation improvement program. The commission shall keep track of any resulting shortfalls or surpluses in county shares.

(k) Notwithstanding subdivision (a), in a region defined by Section 66502 of the Government Code, the transportation planning agency may adopt a resolution to pool the county share of any county or counties within the region, provided that each county shall receive no less than 85 percent and not more than 115 percent of its county share for a single county share period and 100 percent of its county share over two consecutive county share periods. The resolution shall be submitted to the commission not later than May 1, immediately preceding the commencement of the county share period.

(*l*) Federal funds used for federal demonstration projects that use federal funds that would otherwise be available to the state shall be subtracted from the county share of the county where the project is located.

SEC. 61. Section 188.9 of the Streets and Highways Code is repealed.

SEC. 62. Section 188.10 is added to the Streets and Highways Code, to read:

188.10. (a) The commission, with assistance from the department and regional agencies, shall maintain a long-term balance of shares, shortfalls, and surpluses for regional improvement programs.

(b) The balance shall include all of the following:

(1) Shares from the fund estimate for each state transportation improvement program pursuant to Section 14525 of the Government Code.

(2) Amounts programmed in each state transportation improvement program pursuant to Section 14529 of the Government Code.

(3) Surpluses or shortfalls due to reservations or advancements pursuant to subdivision (i) of Section 188.8.

(4) Amounts deducted or added because of changes in project development costs or a cost increase or savings in the final engineering estimate or the final right-of-way certification estimate at the time of allocation for construction, pursuant to subdivisions (d) and (e) of Section 188.8.

(5) Any supplemental project allocations during or following construction.

(6) Amounts deducted or added because of amendments to the state transportation improvement program that add, delete, or change the scope and cost of regional improvement projects, pursuant to Section 14531 of the Government Code.

(c) The balance through the preceding fiscal year shall be made available for review by all regional agencies at the time of each fund estimate, and by not later than August 15 of each year.

(d) The commission, through the fund estimate, shall restore for the next state transportation improvement program the interregional improvement program level specified in subdivision (a) of Section 164.

SEC. 63. Section 199 of the Streets and Highways Code is repealed.

SEC. 64. Section 199.1 of the Streets and Highways Code is repealed.

SEC. 65. Section 199.2 of the Streets and Highways Code is repealed.

SEC. 66. Section 199.3 of the Streets and Highways Code is repealed.

SEC. 67. Section 199.4 of the Streets and Highways Code is repealed.

SEC. 68. Section 199.6 of the Streets and Highways Code is repealed.

SEC. 69. Section 199.7 of the Streets and Highways Code is repealed.

SEC. 70. Section 199.8 of the Streets and Highways Code is repealed.

SEC. 71. Section 199.9 of the Streets and Highways Code is repealed.

SEC. 72. Section 199.10 of the Streets and Highways Code is repealed.

SEC. 73. Section 199.11 of the Streets and Highways Code is repealed.

SEC. 74. Section 2600 of the Streets and Highways Code is repealed.

SEC. 75. Section 2601 of the Streets and Highways Code is amended to read:

2601. (a) For purposes of this chapter:

(1) "Applicant" means a city, a county, or any local entity that is authorized to impose taxes or fees and that has responsibility for constructing highways or exclusive public mass transit guideways.

(2) "Eligible project" means a local road, a state highway, or an exclusive public mass transit guideway improvement project that meets all of the following conditions:

(A) Upon completion of the project, it would constitute a usable segment that would increase the capacity of the highway or guideway or would extend service to new areas, or, in the case of a local road rehabilitation project, it would extend the useful life of the roadway by at least 10 years.

(B) The applicant has committed, or is capable of committing, to pay the local share from its local fund to complete the project.

(C) The project is not receiving any other state funds.

(D) The applicant has completed, or is capable of completing, all project development work so that the contracts for the project can be awarded within two years of the date that the project was submitted to the department pursuant to subdivision (a) of Section 2602.

(E) Improvements to state highways are consistent with state and federal standards, are designed to minimize long-term maintenance costs, and are approved by the department.

(3) "Local fund" means revenues from any locally imposed tax or fee.

(4) "Local share" means the total cost of completing the project, less any state matching funds applied for through this partnership program and any federal funds.

(5) "State share" means the amount of state funds applied for and in no case shall it exceed local share. The state share is not subject to the requirements of Sections 188 and 188.8.

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

SEC. 76. Section 2602 of the Streets and Highways Code is amended to read:

2602. (a) The state-local transportation partnership program shall be implemented by the department and the applicants under the following procedures:

(1) Applicants shall submit applications for eligible projects to the department not later than June 30.

(2) The department shall review the applications for consistency with the requirements of this chapter and shall compile a preliminary

list of all eligible projects not later than September 30 of the year in which the application was submitted.

(3) (A) If the total state share for eligible projects exceeds the amount specified in the Governor's proposed budget, the department shall compute the preliminary pro rata share of state funds to be available so that each eligible project would receive the same ratio of state share to local share. Not later than April 1 of the following year, the department shall advise the applicants of the preliminary pro rata share of state funds to be available.

(B) Not later than June 15 of the following year, each applicant shall inform the department whether or not it can proceed with the project with the lower state share and meet the project development completion requirements specified in subparagraph (D) of paragraph (2) of subdivision (a) of Section 2601.

(C) Upon the enactment of the annual Budget Act, the department shall compile a new list of eligible projects consisting of those projects that were included in the original list that the applicant has indicated it can proceed with a lower state share and for which the applicant has indicated it can still meet the delivery requirements pursuant to subparagraph (D) of paragraph (2) of subdivision (a) of Section 2601.

(D) Based on the amount of the appropriation contained in the annual Budget Act, the department shall compute the final pro rata state share so that each project on the new list would receive the same ratio of state share to local share.

(E) Within 30 days of the enactment of the annual Budget Act, the department shall report to the Legislature on the projects being funded through this program and the ratio of state share to local share.

(4) The Legislature intends to appropriate two hundred fifty million dollars ($250,000,000) by June 30, 1990, two hundred fifty million dollars ($250,000,000) by June 30, 1991, and two hundred million dollars ($200,000,000) by June 30 of each year thereafter for this program.

(5) Construction contracts for projects on the eligibility list established pursuant to paragraph (2) or (3) shall be let not later than June 30 of the fiscal year for which funds are appropriated pursuant to paragraph (4).

(6) Beginning with projects funded through appropriations made by the Budget Act of 1992, applications shall not be accepted for any project within the boundaries of a project subject to, but for which contracts were not let in accordance with, paragraph (5), for a period of three fiscal years following the fiscal year in which the applicant's notification of intent to proceed under subparagraph (B) of paragraph (3) was submitted.

(7) The funds appropriated shall be expended not later than June 30 of the fourth year following the appropriation.

(8) Notwithstanding paragraphs (5) and (6), any project in Orange County for which a construction contract would otherwise have been required to be let by June 30, 1995, may be let until, but not later than, June 30, 1996.

(9) Notwithstanding paragraphs (5) and (6), any project in Santa Barbara County for which a construction contract would otherwise have been required to be let by June 30, 1995, may be let until, but not later than, December 31, 1996.

(10) The Lakeville Highway widening project (State Route 116 from Caulfield Lane to the Petaluma city limit), and the Mare Island Way/Wilson Avenue Cycle 6 improvement project in the City of Vallejo, for which a construction contract would otherwise have been required to be let by June 30, 1996, may be let until, but not later than, June 30, 1997.

(11) Notwithstanding paragraphs (5) and (6), any project in Siskiyou County for which a construction contract would otherwise have been required to be let by June 30, 1997, may be let until, but not later than, June 30, 1999.

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

SEC. 77. Section 2602.1 of the Streets and Highways Code is amended to read:

2602.1. (a) Notwithstanding Section 2602, for the 1990–91 fiscal year only, funding for the state-local transportation partnership program shall be implemented as follows:

(1) Any project which was included in the list of eligible projects compiled by the department as of April 1, 1990, may be withdrawn by the applicant for funding during the 1990–91 fiscal year and resubmitted not later than July 31, 1990, for funding in the 1991–92 fiscal year.

(2) The department shall recompute the pro rata share of state funding for projects that remain on the list on August 1, 1990, based upon the amount appropriated for the program for the 1990–91 fiscal year, so that each eligible project will receive the same ratio of state share to local share.

(3) Not later than September 1, 1990, the department shall notify the Legislature of the ratio of state share to local share computed pursuant to paragraph (2).

(4) With respect to any project which was withdrawn and resubmitted by July 31, 1990, pursuant to paragraph (1), the department shall, as nearly as possible, administer and implement the program for the 1990–91 fiscal year in accordance with the procedure prescribed by this section, as if this section had been in effect on that date.

(b) 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. 78. Section 3.5 of this bill incorporates amendments to Section 14524 of the Government Code proposed by both this bill and AB 87. 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 14524 of the Government Code, and (3) this bill is enacted after AB 87, in which case Section 3 of this bill shall not become operative.

SEC. 79. Section 5.5 of this bill incorporates amendments to Section 14525 of the Government Code proposed by both this bill and AB 87. 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 14525 of the Government Code, and (3) this bill is enacted after AB 87, in which case Section 5 of this bill shall not become operative.

CHAPTER 623

An act to amend Section 6254 of the Government Code, to amend Section 101755 of the Health and Safety Code, and to add and repeal Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code, relating to children, and making an appropriation therefor.

[Approved by Governor October 2, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

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

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial

institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of

birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code, except that the address of the victim of any crime defined by Section 220, 261, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph shall not be used directly or indirectly to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

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

(*l*) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel, except those records in the public data base maintained by the Legislative Counsel that are described in Section 10248.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application which are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training

to employees who do not have full collective bargaining and representation rights under these chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until the time a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant

to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(v) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695), and Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or, financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

(y) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code, on or after January 1, 1998, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract entered into pursuant to Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

SEC. 2. Part 6.2 (commencing with Section 12693) is added to Division 2 of the Insurance Code, to read:

PART 6.2. HEALTHY FAMILIES

CHAPTER 1. PURPOSE

12693. The Legislature declares all of the following:

(a) Approximately 1.6 million California children, 17 percent of children ages 17 and under, have no health insurance. One in four California children, which is 2.3 million, rely on Medi-Cal for insurance coverage, while just over half of the state's children, 53 percent, have employment-based coverage through a parent.

(b) Most uninsured California children come from low-income families, with nearly 75 percent of uninsured children (1.2 million) living in families with incomes below 200 percent of the federal poverty level. Children whose families earn incomes between 100 and 200 percent of the federal poverty level, an estimated 580,000 children, are among the most vulnerable of populations. Their families make too much money to generally qualify for free Medi-Cal, are employed in working class jobs that typically do not offer insurance, and cannot afford private health insurance. In short, affordability remains a major barrier to obtaining coverage.

(c) Notwithstanding the generally good health of children, health insurance coverage is important to ensure that they receive the health care that is essential to monitor their growth, nutrition, and development and to address potential health problems early.

(d) Lack of insurance coverage for children results in reduced access to medical services, resulting in restricted access to primary and preventive care and increased reliance on emergency rooms and hospitals for treatment. Timely treatment for infectious and chronic diseases can prevent more serious medical conditions in children of all ages.

(e) When a child is seriously ill or injured, the costs of needed medical care can force families into financial ruin.

(f) That by July 1, 1998, there shall be in place a program providing access to health coverage to all children residing in households with family incomes below 200 percent of the federal poverty level.

(g) It is the intent of the Legislature that the program comply with the requirements of Title XXI of the Social Security Act, also know as the State Children's Health Insurance Program.

CHAPTER 2. DEFINITIONS

12693.01. For purposes of this part, the definitions contained in this chapter shall govern the construction of this part, unless the context requires otherwise.

12693.02. "Applicant" means a person over the age of 18 years who is a natural or adoptive parent; a legal guardian; or a caretaker relative, foster parent, or stepparent with whom the child resides, who applies for coverage under the program on behalf of a child. "Applicant" also means a person 18 years of age who is applying on his or her own behalf for coverage under the program.

12693.03. "Board" means the Managed Risk Medical Insurance Board.

12693.04. "Child" means a person who is under 19 years of age who is eligible for the program pursuant to Chapter 9 (commencing with Section 12693.70).

12693.045. "Community provider plan" means that participating health plan in each geographic area that has been designated by the board as having the highest percentage of traditional and safety net providers in its provider network.

12693.05. "County organized health system" means a health care organization that contracts with the State Department of Health Services to provide comprehensive health care to all eligible Medi-Cal beneficiaries residing in the county, and that is operated directly by a public entity established by a county government pursuant to Section 14087.51 or 14087.54 of the Welfare and Institutions Code, or Chapter 3 (commencing with Section 101675) of Part 4 of Division 101 of the Health and Safety Code.

12693.06. "Family contribution" means the cost to an applicant to enable herself or himself or an eligible child or children to enroll in and participate in the program. Family contribution does not include copayments for insured services.

12693.065. "Family value package" means the combination of participating health, dental, and vision plans available to subscribers in each geographic area offering the lowest prices to the program. The board may define the family value package to include not only the combination of participating health, dental, and vision plans offering the absolute lowest price to the program but also the combination of health, dental, and vision plans within a fixed percentage or dollar amount of the absolute lowest price.

12693.07. "Fund" means the Healthy Families Fund.

12693.08. "Local initiative" means a prepaid health plan that is organized by, or designated by, a county government or county governments, or organized by stakeholders, of a region designated by

the department to provide comprehensive health care to eligible Medi-Cal beneficiaries. The entities established pursuant to the following sections of the Welfare and Institutions Code are local initiatives: Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.96.

12693.09. "Participating dental plan" means any of the following plans that is lawfully engaged in providing, arranging, paying for, or reimbursing the cost of personal dental services under insurance policies or contracts, or membership contracts, in consideration of premiums or other periodic charges payable to it, and that contract with the board to provide coverage to program subscribers:

(a) A dental insurer holding a valid outstanding certificate of authority from the commissioner.

(b) A specialized health care service plan as defined under subdivision (o) of Section 1345 of the Health and Safety Code.

12693.10. "Participating health plan" means any of the following plans that is lawfully engaged in providing, arranging, paying for, or reimbursing the cost of personal health care services under insurance policies or contracts, medical and hospital service arrangements, or membership contracts, in consideration of premiums or other periodic charges payable to it, and that contracts with the board to provide coverage to program subscribers:

(a) A private health insurer holding a valid outstanding certificate of authority from the commissioner.

(b) A health care service plan as defined under subdivision (f) of Section 1345 of the Health and Safety Code.

(c) A county organized health system.

(d) A local initiative.

12693.11. "Participating vision care plan" means any of the following plans that is lawfully engaged in providing, arranging, paying for, or reimbursing the cost of personal vision services under insurance policies or contracts, or membership contracts, in consideration of premiums or other periodic charges payable to it, and that contract with the board to provide coverage to program subscribers:

(a) A vision insurer holding a valid outstanding certificate of authority from the commissioner.

(b) A specialized health care service plan as defined under subdivision (o) of Section 1345 of the Health and Safety Code.

12693.12. "Program" means the Healthy Families Program, which includes a purchasing pool providing health coverage for children in families without access to affordable employer based dependent coverage and a purchasing credit mechanism through which families with access to employer based dependent coverage can receive financial assistance with the cost of dependent coverage for children.

12693.13. "Purchasing credit member" means an applicant 18 years of age or a child who is eligible for and participates in the purchasing credit component of the program.

12693.14. "Subscriber" means an applicant 18 years of age or a child who is eligible for and participates in the purchasing pool component of the program.

12693.15. "Supplemental coverage" means coverage purchased by the program from (a) a private health insurer holding a valid outstanding certificate of authority from the Insurance Commissioner, or (b) a health care service plan as defined under subdivision (f) of Section 1345 of the Health and Safety Code to bring the coverage available to purchasing credit members into at least 95 percent actuarial equivalence with the coverage provided to subscribers through the purchasing pool component of the program. The coverage shall provide for any necessary adjustment of the cost-sharing levels charged to purchasing credit members to be equivalent to those charged to subscribers through the purchasing pool component of the program. Subscriber costs and benefits for the purchasing credit members shall be at least 95 percent actuarially equivalent to subscriber costs and benefits in the purchasing pool component.

CHAPTER 3. CREATION OF PROGRAM AND POWERS OF THE BOARD

12693.20. The Healthy Families Program is hereby created and shall be administered by the Managed Risk Medical Insurance Board.

12693.21. The board may do all of the following consistent with the standards in this part:

(a) Determine eligibility criteria for the program.

(b) Determine the participation requirements of applicants, subscribers, purchasing credit members, and participating health, dental, and vision plans.

(c) Determine when subscribers' coverage begins and the extent and scope of coverage.

(d) Determine family contribution amount schedules and collect the contributions.

(e) Provide or make available subsidized coverage through participating health, dental, and vision plans, in a purchasing pool, which may include the use of a purchasing credit mechanism, through supplemental coverage, or through coordination with other state programs.

(f) Provide for the processing of applications, the enrollment of subscribers, and the distribution of purchasing credits.

(g) Determine and approve the benefit designs and copayments required by health, dental, or vision plans participating in the purchasing pool component program.

(h) Approve those health plans eligible to receive purchasing credits.

(i) Enter into contracts.
(j) Sue and be sued.
(k) Employ necessary staff.
(*l*) Authorize expenditures from the fund to pay program expenses that exceed subscriber contributions, and to administer the program as necessary.
(m) Maintain enrollment and expenditures to ensure that expenditures do not exceed amounts available in the Healthy Families Fund and if sufficient funds are not available to cover the estimated cost of program expenditures, the board shall institute appropriate measures to limit enrollment.
(n) Issue rules and regulations, as necessary. Until January 1, 2000, any rules and regulations issued pursuant to this subdivision may be adopted as emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety or general welfare. The regulations shall become effective immediately upon filing with the Secretary of State.
(o) Exercise all powers reasonably necessary to carry out the powers and responsibilities expressly granted or imposed by this part.

CHAPTER 4. ADMINISTRATION

12693.25. The board may use a purchasing pool model, issuance of purchasing credits, supplemental coverage, or other means as appropriate to meet the purposes of this part.
12693.26. The board shall establish a purchasing pool for coverage of program subscribers to enable applicants without access to affordable and comprehensive employer-sponsored dependent coverage to provide their eligible children with health, dental, and vision benefits. The board shall negotiate separate contracts with participating health, dental, and vision plans for each of the benefit packages described in Chapters 5 (commencing with Section 12693.60), 6 (commencing with Section 12693.63), and 7 (commencing with Section 12693.65).
12693.27. (a) The board shall develop a purchasing credit mechanism to enable applicants with access to affordable and comprehensive employer-sponsored dependent coverage to have an eligible child enrolled in the employer's health plan. Children enrolled in the purchasing credit mechanism may receive dental and vision benefits through the purchasing pool component of the program.
(b) In order to be eligible for a purchasing credit, the employer shall make a meaningful contribution toward the cost of coverage for an employee's dependents for whom an application is made for a

purchasing credit. An employer's contribution, including any increases or decreases in the contribution made after the effective date of this part, may not vary among employees based on wage base or job classification.

(c) The board shall adopt appropriate mechanisms to recoup purchasing credit expenditures from an employer plan when the employees or dependents on behalf of whose coverage the payments are made are no longer enrolled in that plan.

(d) An employer utilizing a purchasing credit arrangement and a participating health plan receiving a purchasing credit must use 100 percent of the funds for the purchase of coverage for purchasing credit members including dependent coverage.

(e) A participating plan shall not assess the board for any portion of late fees, returned checks, or other fees in connection with an employer with group coverage who is also participating in the purchasing credit arrangement.

(f) An applicant may begin coverage for dependents using a purchasing credit arrangement at any time. Purchasing credit members enrolling in employer-sponsored coverage shall not be considered late enrollees for the purposes of subdivision (d) of Section 1357 and subdivision (b) of Section 1357.50 of the Health and Safety Code, and subdivision (b) of Section 10198.6 and subdivision (*l*) of Section 10700.

(g) Under no circumstances shall the employee's share of cost, including, deductibles, copayments, and coinsurance, for dependent coverage, including any supplemental coverage necessary to meet the 95 percent actuarial standard established in Section 12693.15 be more than that required as the employee's share of premium if the employee's children were enrolled in the purchasing pool component of the program.

(h) The board may limit participation in the purchasing credit program to those employers that provide employee health benefits through participation in public or private purchasing cooperatives.

12693.28. The program shall be administered without regard to gender, race, creed, color, sexual orientation, health status, disability, or occupation.

12693.29. (a) The board shall use appropriate and efficient means to notify families of the availability of health coverage from the program.

(b) The State Department of Health Services in conjunction with the board shall conduct a community outreach and education campaign in accordance with Section 14067 of the Welfare and Institutions Code to assist in notifying families of the availability of health coverage for their children.

(c) The board shall use appropriate materials, which may include brochures, pamphlets, fliers, posters, and other promotional items, to notify families of the availability of coverage through the program.

12693.30. (a) The board shall assure that written enrollment information issued or provided by the program is available to program subscribers and applicants in each of the languages identified pursuant to Chapter 17.5 (commencing with Section 7290) of Division 7 of Title 1 of the Government Code.

(b) The board shall assure that phone services provided to program subscribers and applicants by the program are available in all of the languages identified pursuant to Chapter 17.5 (commencing with Sec. 7290) of Division 7 of Title 1 of the Government Code.

(c) The board shall assure that interpreter services are available between subscribers and contracting plans. The board shall assure that subscribers are provided information within provider network directories of available linguistically diverse providers.

(d) The board shall assure that participating health, dental, and vision plans provide documentation on how they provide linguistically and culturally appropriate services, including marketing materials, to subscribers.

12693.31. No participating health, dental, or vision plan shall, in an area served by the program, directly, or through an employee, agent, or contractor, provide an applicant, or a child with any marketing material relating to benefits or rates provided under the program unless the material has been both reviewed and approved by the board.

12693.32. (a) The board may pay designated individuals or organizations an application assistance fee, if the individual or organization assists an applicant to complete the program application, and the applicant is enrolled in the program as a result of the application.

(b) The board may establish the list of eligible individuals, or categories of individuals and organizations, the amount of the application assistance payment and rules necessary to assure the integrity of the payment process.

(c) The board, as part of its community outreach and education campaign, may include community-based face-to-face initiatives to educate potentially eligible applicants about the program and to assist potential applicants in the application process. Those entities undertaking outreach efforts shall not include as part of their responsibilities the selection of a health plan and provider for the applicant. Participating plans shall be prohibited from directly, indirectly, or through their agents conducting in-person, door-to-door, mail, or phone solicitation of applicants for enrollment except through employers with employees eligible to participate in the purchasing credit mechanism. However, information approved by the board on the providers and plans available to prospective subscribers in their geographic areas shall be distributed through any door-to-door activities for potentially eligible applicants and their children.

12693.33. To the extent feasible and permissible under federal law and with receipt of necessary federal approvals, the State Department of Health Services and the board shall develop a joint Medi-Cal and program application and enrollment form for children. The department shall seek any federal approval necessary to implement a combined application form.

12693.34. (a) The board may establish geographic areas within which participating health, dental, and vision plans may offer coverage to subscribers.

(b) Nothing in this section shall restrict a county organized health system or a local initiative from providing service to program subscribers in their licensed geographic service area.

12693.35. Participating health, dental, and vision plans shall have, but need not be limited to, all of the following operating characteristics satisfactory to the board in consultation with the plan's licensing or regulatory oversight agency:

(a) Strong financial condition, including the ability to assume the risk of providing and paying for covered services. A participating plan may utilize reinsurance, provider risk sharing, and other appropriate mechanisms to share a portion of the risk.

(b) Adequate administrative management.

(c) A satisfactory grievance procedure.

(d) Participating plans that contract with or employ health care providers shall have mechanisms to accomplish all of the following, in a manner satisfactory to the board:

(1) Review the quality of care covered.

(2) Review the appropriateness of care covered.

(3) Provide accessible health care services.

(e) (1) Before the effective date of the contract, the participating health plan shall have devised a system for identifying in a simple and clear fashion both in its own records and in the medical records of subscribers the fact that the services provided are provided under the program.

(2) Throughout the duration of the contract, the plan shall use the system described in paragraph (1).

(f) Plans licensed by the Department of Corporations shall be deemed to meet the requirements of subdivisions (a) to (d), inclusive, of this section.

12693.36. (a) Notwithstanding any other provision of law, the board shall not be subject to licensure or regulation by the Department of Insurance or the Department of Corporations, as the case may be.

(b) Participating health, dental, and vision plans that contract with the program and are regulated by either the Insurance Commissioner or the Department of Corporations shall be licensed and in good standing with their respective licensing agencies. In their application to the program, those entities shall provide assurance of their standing with the appropriate licensing entity.

(c) Local initiatives that have a contract with the State Department of Health Services, and that contract with the program, and that are licensed by the Department of Corporations but do not have a commercial license from the Department of Corporations, may contract with the board for a maximum of 18 months. During this 18-month period, those plans shall be in good standing with the Department of Corporations and shall demonstrate to the board that they are making a good faith effort to obtain a commercial license with the Department of Corporations. The board may extend this period to 24 months if the board determines the additional time is necessary to comply with this requirement. In their application to the program, those entities shall provide assurance of their standing with the Department of Corporations and shall outline their plans for obtaining commercial licensure.

(d) County organized health systems and the special health care authority established under Section 101675 of the Health and Safety Code that have a contract with the State Department of Health Services, and that contract with the program, and that are not licensed by either the Insurance Commissioner or the Department of Corporations may contract with the board for a maximum of 24 months. During this 24-month period those plans shall be in good standing with the state agency providing oversight to their operations and shall demonstrate to the board that they are making a good faith effort to obtain licensure with the Department of Insurance or the Department of Corporations. In their application to the program, those entities shall provide assurance of their standing with the appropriate state oversight entity and shall outline their plans for obtaining licensure from the Department of Insurance or the Department of Corporations.

12693.37. (a) The board shall contract with a broad range of health plans in an area, if available, to ensure that subscribers have a choice from among a reasonable number and types of competing health plans. The board shall develop and make available objective criteria for health plan selection and provide adequate notice of the application process to permit all health plans a reasonable and fair opportunity to participate. The criteria and application process shall allow participating health plans to comply with their state and federal licensing and regulatory obligations, except as otherwise provided in this chapter. Health plan selection shall be based on the criteria developed by the board.

(b) (1) In its selection of participating plans the board shall take all reasonable steps to assure the range of choices available to each applicant, other than a purchasing credit member, shall include plans that include in their provider networks and have signed contracts with traditional and safety net providers.

(2) Participating health plans shall be required to submit to the board on an annual basis a report summarizing their provider

network. The report shall provide, as available, information on the provider network as it relates to:

(A) Geographic access for the subscribers.

(B) Linguistic services.

(C) The ethnic composition of providers.

(D) The number of subscribers who selected traditional and safety net providers.

(c) (1) The board shall not rely solely on the Department of Corporations' determination of a health plan network's adequacy or geographic access to providers in the awarding of contracts under this part. The board shall collect and review demographic, census, and other data to provide to prospective local initiatives, health plans, or specialized health plans, as defined in this act, specific provider contracting target areas with significant numbers of uninsured children in low-income families. The board shall give priority to those plans, on a county-by-county basis, that demonstrate that they have included in their prospective plan networks significant numbers of providers in these geographic areas.

(2) Targeted contracting areas are those ZIP Codes or groups of ZIP Codes or census tracts or groups of census tracts that have a percentage of uninsured children in low-income families greater than the overall percentage of uninsured children in low-income families in that county.

(d) In each geographic area, the board shall designate a community provider plan that is the participating health plan which has the highest percentage of traditional and safety net providers in its network. Subscribers selecting such a plan shall be given a family contribution discount as described in Section 12693.43.

(e) The board shall establish reasonable limits on health plan administrative costs.

12693.38. The board shall contract with a sufficient number of dental and vision plans to assure that dental and vision benefits are available to all subscribers. The board shall develop and make available objective criteria for dental and vision plan selection and provide adequate notice of the application process to permit all dental and vision plans a reasonable and fair opportunity to participate. The criteria and application process shall allow participating dental and vision plans to comply with their state and federal licensing and regulatory obligations, except as otherwise provided in this part. Dental and vision plan selection shall be based on the criteria developed by the board.

12693.39. The board shall establish a process for determining which employer-sponsored health plans are eligible to receive a purchasing credit issued by the program. The process shall assure that the benefits, copayments, coinsurance, and deductibles are no less than 95 percent actuarially equivalent to those provided to program subscribers enrolled in the purchasing pool.

12693.40. The board shall contract with health plans to provide coverage supplemental to that provided by an applicant's or applicant's spouse's employer-sponsored health plan for the purchasing credit member, if the employer-sponsored plan's benefits are not 95 percent actuarially equivalent to those provided to subscribers. If supplemental coverage is available and provided, the plan may then, notwithstanding Section 12693.39, become eligible to receive purchasing credits.

12693.41. (a) Upon the effective date of coverage of a child eligible for the program, the board shall arrange for payment of providers who participate in the Child Health and Disability Prevention Program pursuant to Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, for well-child health assessments, immunizations, and initial treatment provided up to 30 days prior to the effective date of coverage.

(b) The board shall pay only for those services that are eligible for federal financial participation under Section 2105 of Title XXI of the Social Security Act and that are approved in the required state plan under that title.

(c) (1) Child Health and Disability Prevention Program providers shall submit charges for the services under subdivision (a) on the form or in the format specified by the department for the Child Health and Disability Prevention Program. Those providers shall be reimbursed at the rates established for these services by the Child Health and Disability Prevention Program once coverage under the program is established.

(2) Those providers shall submit charges for services reimbursable under Medi-Cal on the form or in the format specified by the department for Medi-Cal. Those providers shall be reimbursed at the rates established for these services by Medi-Cal once coverage under Medi-Cal is established.

(d) (1) The board may use the state fiscal intermediary for medicaid to process the payments authorized in subdivision (a).

(2) The board shall be exempt from the requirements of Chapter 7 (commencing with Section 11700) of Division 3 of Title 2 of the Government Code and Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code as those requirements apply to the use of contractual claims processing services by the state fiscal intermediary.

12693.42. Any purchasing credit issued by the board, or a contractor acting on behalf of the board, pursuant to this part shall have an overall cost to the program no greater than the cost to the program to enroll the subscriber in the lowest cost plan available to the subscriber through the purchasing pool. Administrative costs and the cost to the program of any supplemental product shall be included in the calculation of the cost of the purchasing credit program and deducted from the amount of the purchasing credit.

12693.43. (a) Applicants applying to the purchasing pool shall agree to pay family contributions. Family contribution amounts consist of the following two components:

(1) The flat fees described in subdivision (b) or (d).

(2) Any amounts that are charged to the program by participating health, dental, and vision plans selected by the applicant that exceed the cost to the program of the highest cost Family Value Package in a given geographic area.

(b) In each geographic area the board shall designate one or more Family Value Packages for which the required total family contribution is:

(1) Seven dollars ($7) per child with a maximum required contribution of fourteen dollars ($14) per month per family for applicants with annual household incomes up to and including 150 percent of the federal poverty level.

(2) Nine dollars ($9) per child with a maximum required contribution of twenty-seven dollars ($27) per month per family for applicants with annual household incomes greater than 150 percent and up to and including 200 percent of the federal poverty level.

(c) Combinations of health, dental, and vision plans that are more expensive to the program than the highest cost Family Value Package may be offered to and selected by applicants. However, the cost to the program of those combinations that exceeds the price to the program of the highest cost Family Value Package shall be paid by the applicant as part of the family contribution.

(d) The board shall provide a family contribution discount to those applicants who select the health plan in a geographic area which has been designated as the Community Provider Plan. The discount shall reduce the portion of the family contribution described in subdivision (b) to the following:

(1) A family contribution of four dollars ($4) per child with a maximum required contribution of eight dollars ($8) per month per family for applicants with annual household incomes up to and including 150 percent of the federal poverty level.

(2) Six dollars ($6) per child with a maximum required contribution of eighteen dollars ($18) per month per family for applicants with annual household incomes greater than 150 percent and up to and including 200 percent of the federal poverty level.

(e) Applicants who pay three months of required family contributions in advance shall receive the fourth consecutive month of coverage with no family contribution required.

(f) It is the intent of the Legislature that the family contribution amounts described in this section comply with the premium cost sharing limits contained in Section 2103 of Title XXI of the Social Security Act. If the amounts described in subdivision (a) are not approved by the federal government, the board may adjust these amounts to the extent required to achieve approval of the state plan.

12693.44. (a) The board shall establish family contribution amounts for purchasing credit members that are equivalent to the amounts charged to subscribers participating in the purchasing pool portion of the program. Purchasing credit members shall not be required to pay family contribution amounts greater than the cost to the applicant if the purchasing credit members were enrolled in the purchasing pool component of the program. When calculating the cost to the applicant to participate in the purchasing pool, the family contribution discounts provided in subdivisions (c), (d), and (e) of Section 12693.34 shall not be considered. Purchasing credit members shall be eligible for dental and vision coverage through the purchasing pool at no additional premium charge.

(b) The family contribution amounts paid on behalf of a purchasing credit member may be paid directly to the applicant's employer through a payroll deduction or other mechanism.

12693.45. (a) After 60 days of nonpayment of family contributions by an applicant, and a reasonable written notice period of no less than 30 days is provided to the applicant, subscribers or purchasing credit members may be disenrolled for an applicant's failure to pay family contributions and shall not be permitted to reenter the program for a period of six months. The board may impose or contract for collection actions to collect unpaid family contributions.

(b) Disenrollments shall be effective as of the last period for which full family contributions were paid. The disenrollments may be retroactive.

(c) The board may waive the period of exclusion in subdivision (a) if good cause is found, such as being laid off from employment or catastrophic illness.

12693.46. The board may prohibit applicants who drop coverage after enrolling in the pool from reenrollment in the program for up to six months.

12693.47. The program may place a lien on compensation or benefits, recovered or recoverable by a subscriber or applicant from any party or parties responsible for the compensation or benefits for which benefits have been provided under a policy issued under this part.

12693.48. The board may adjust payments made to a participating health plan if the board finds that the plan has a significantly disproportionate share of high- or low-risk subscribers. Prior to making this finding, the program shall obtain validated data from participating health plans. Reporting requirements shall be administratively compatible with the methods of operation of the health plans. Any adjustments to payments shall utilize demographic and other factors which are actuarially related to risk.

12693.49. (a) When an applicant is dissatisfied with any action or inaction of a participating plan in which a subscriber is enrolled through the purchasing pool, the applicant shall first attempt to

resolve the dispute with the participating plan according to its established policies and procedures.

(b) The board shall assure that all participating health, dental, and vision plans make subscribers aware of the regulatory oversight available to the applicant by the participating health, dental, or vision plan's licensing or state oversight entity.

(c) The board shall assure that all participating health, dental, and vision plans report to the board, at least once a year, the number and types of benefit grievances filed by applicants on behalf of subscribers in the program. This information shall be available to applicants upon request in a format determined by the board.

12693.51. (a) A transfer of enrollment from one participating health plan to another may be made by a subscriber at times and under conditions as may be prescribed by regulations of the board.

(b) The board shall provide for the transfer of coverage of any subscriber to another participating plan (1) if a contract with any participating plan under which the subscriber receives coverage is canceled or not renewed and (2) at least once a year upon request in a manner as determined by the board, and (3) if a subscriber moves to an area that the current health plan does not serve.

12693.52. The board may negotiate or arrange for stop-loss insurance coverage that limits the program's fiscal responsibility for the total costs of health services provided to program subscribers, or arrange for participating health plans to share or assure the financial risk for a portion of the total cost of health care services to program subscribers, or both.

12693.53. The board shall develop and utilize appropriate cost containment measures to maximize the coverage offered under the program. Those measures may include limiting the expenditure of state funds for this purpose to the price to the state for the lowest cost plan contracting with the program and creation of program rules that restrict the ability of employers or applicants to drop existing coverage in order to qualify children for the program.

12693.54. A contract entered pursuant to this part shall be exempt from any provision of law relating to competitive bidding, and shall be exempt from the review or approval of any division of the Department of General Services. The board shall not be required to specify the amounts encumbered for each contract, but may allocate funds to each contract based on the projected or actual subscriber enrollments to a total amount not to exceed the amount appropriate for the program including family contributions.

CHAPTER 5. HEALTH BENEFITS AND COPAYMENTS

12693.60. Coverage provided to subscribers shall meet the federal coverage requirements in Section 2103 of Title XXI of the Social Security Act. The covered health benefits provided to subscribers shall be equivalent to those provided to state employees through the

Public Employees' Retirement System on January 1, 1998, except that the plans may provide a mechanism for inpatient hospital care provided under the mental health benefit through which applicants may agree to a treatment plan in which each inpatient day may be substituted for two residential treatment days or three day treatment program days.

12693.61. The following provisions apply for subscribers who have been identified by the participating health plans as potentially seriously emotionally disturbed.

(a) Participating plans, to the extent feasible, including plans receiving purchasing credits shall develop memoranda of understanding, consistent with criteria established by the board in consultation with the State Department of Mental Health, for referral of subscribers who are seriously emotionally disturbed to a county mental health department. This referral does not relieve a participating plan from providing the mental health coverage specified in its contract, including assessment of, and development of, a treatment plan for serious emotional disturbance. Plans may contract with county mental health departments to provide for all, or a portion of, the services provided under the program's mental health benefit.

(b) The board shall establish an accounting process under which counties providing services to subscribers who have been determined to be seriously emotionally disturbed pursuant to Section 5600.3 of the Welfare and Institutions Code can claim federal reimbursement for the services. The board shall reimburse counties pursuant to the rates set by the State Department of Mental Health in accordance with Sections 5705, 5716, 5718, 5720, 5724, and 5778 of the Welfare and Institutions Code. The actual amount reimbursed by the board shall be the federal share of the cost of the subscriber.

(c) This section shall only become operative with federal approval of the State Child Health Plan and the approval of federal financial participation.

(d) Counties choosing to enter into a memorandum of understanding pursuant to subdivision (a) shall provide the nonfederal share of cost for the subscriber.

12693.615. (a) The board shall establish the required subscriber copayment levels for specific benefits consistent with the limitations of Section 2103 of Title XXI of the Social Security Act. The copayment levels established by the board shall, to the extent possible, reflect the copayment levels established for state employees, effective January 1, 1998, through the Public Employees' Retirement System. Under no circumstances shall copayments exceed the copayment level established for state employees, effective, January 1, 1998, through the Public Employees' Retirement System. Total annual copayments charged to subscribers shall not exceed two hundred fifty dollars ($250) per family. The board shall instruct participating health plans to work with their provider networks to provide for extended

payment plans for subscribers utilizing a significant number of health services for which copayments are charged. The board shall track the number of subscribers who meet the copayment maximum in each year and make adjustments in the amount if a significant number of subscribers reach the copayment maximum.

(b) No deductibles shall be charged to subscribers for health benefits.

(c) Coverage provided to subscribers shall not contain any preexisting condition exclusion requirements.

(d) No participating health, dental, or vision plan shall exclude any subscriber on the basis of any actual or expected health condition or claims experience of that subscriber or a member of that subscriber's family.

(e) There shall be no variations in rates charged to subscribers including premiums and copayments, on the basis of any actual or expected health condition or claims experience of any subscriber or subscriber's family member. The only variation in rates charged to subscribers, including copayments and premiums, that shall be permitted is that which is expressly authorized by Section 12693.43.

(f) There shall be no copayments for preventive services as defined in Section 1367.35 of the Health and Safety Code.

(g) There shall be no annual or lifetime benefit maximums in any of the coverage provided under the program.

(h) Plans that receive purchasing credits pursuant to Section 12693.39 shall comply with subdivisions (b), (c), (d), (e), (f), and (g).

12693.62. Notwithstanding any other provision of law, for a subscriber who is determined by the California Children's Services Program to be eligible for benefits under the program pursuant to Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, a participating plan shall not be responsible for the provision of, or payment for, the particular services authorized by the California Children's Services Program for the particular subscriber for the treatment of a California Children's Services Program eligible medical condition. All other services provided under the participating plan shall be available to the subscriber.

CHAPTER 6. DENTAL BENEFITS AND COPAYMENTS

12693.63. (a) The board shall determine the dental benefits to be provided to subscribers by the program. Such benefits shall be consistent with those provided to state employees through the Department of Personnel Administration on July 1, 1997, except that orthodontia shall only be a benefit when it is determined to be medically necessary.

(b) The board shall establish the required subscriber copayment levels for dental benefits. The copayment levels established by the

board shall, to the extent possible, reflect the copayment levels provided to state employees through the Department of Personnel Administration on July 1, 1997, except that no copayment shall be charged for medically necessary orthodontia services. There shall be no subscriber copayments for preventive and diagnostic services, including, but not limited to, examinations, teeth cleaning, X-rays, topical fluoride treatments, space maintainers, and sealants.

(c) No deductible shall be charged to subscribers for dental benefits.

12693.64. Notwithstanding any other provision of law, for a subscriber who is determined by the California Children's Services Program to be eligible for benefits under the program pursuant to Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, a participating plan shall not be responsible for the provision of, or payment for, the particular services authorized by the California Children's Services Program for the particular subscriber for the treatment of a California Children's Services Program eligible medical condition. All other services provided under the participating plan shall be available to the subscriber.

CHAPTER 7. VISION BENEFITS AND COPAYMENTS

12693.65. (a) Vision benefits shall be provided to subscribers and shall meet the federal coverage requirements in Section 2103 of Title XXI of the Social Security Act.

(b) The covered benefits shall be equivalent to those provided to state employees through the Department of Personnel Administration on July 1, 1997.

(c) The board shall establish the required subscriber copayment levels for vision benefits consistent with the limitations of Section 2103 of Title XXI of the Social Security Act. The copayment levels established by the board shall, to the extent possible, reflect the copayment levels provided to state employees through the Department of Personnel Administration on July 1, 1997.

12693.66. Notwithstanding any other provision of law, for a subscriber who is determined by the California Children's Services Program to be eligible for benefits under the program pursuant to Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, a participating plan shall not be responsible for the provision of, or payment for, the particular services authorized by the California Children's Services Program for the particular subscriber for the treatment of a California Children's Services Program eligible medical condition. All other services provided under the participating plan shall be available to the subscriber.

CHAPTER 8. LINKAGES WITH PUBLIC PROGRAMS

12693.68. The board shall encourage all plans, including those receiving purchasing credits, that provide services under the program to have viable protocols for screening and referring children needing supplemental services outside of the scope of the screening, preventive, and medically necessary and therapeutic services covered by the contract to public programs providing such supplemental services for which they may be eligible, as well as for coordination of care between the plan and the public programs. The public programs for which plans may be required to develop screening, referral, and care coordination protocols may include the California Children's Services Program, the regional centers, county mental health programs, programs administered by the Department of Alcohol and Drug Programs, and programs administered by local education agencies.

CHAPTER 9. ELIGIBILITY

12693.70. To be eligible to participate in the program, an applicant shall meet all of the following requirements:

(a) Be an applicant applying on behalf of an eligible child, which means a child who is all of the following:

(1) Greater than 12 months of age and less than 19 years of age. An application may be made on behalf of a child less than 12 months of age for coverage to begin as early as the child's first birthday.

(2) Not eligible for no-cost full-scope Medi-Cal or Medicare at the time of application.

(3) In compliance with Sections 12693.71 and 12693.72.

(4) A child who meets citizenship and immigration status requirements that are applicable to persons participating in the program established by Title XXI of the Social Security Act.

(5) A resident of the State of California pursuant to Section 244 of the Government Code.

(6) In a family with a gross annual household income equal to or less than 200 percent of the federal poverty level.

(b) If the applicant is applying for the purchasing pool, the applicant shall pay the first month's family contribution and agree to remain in the program for six months, unless other coverage is obtained and proof of the coverage is provided to the program.

(c) An applicant shall enroll all of the applicant's eligible children in the program.

12693.71. (a) The board shall monitor applications to determine whether employers and employees have dropped employer-sponsored dependent coverage in order to participate in the program.

(b) The board may disapprove an application if it is determined that the children to be covered under the application were covered by an employer-sponsored insurance within the last three months.

(c) If the board imposes the limitation identified in subdivision (b) or (d), it shall also establish exceptions to this limitation in cases where prior coverage ended due to reasons unrelated to the availability of the program. This shall include, but not be limited to:

(1) Loss of employment due to factors other than voluntary termination.

(2) Change to a new employer that does not provide an option for dependent coverage.

(3) Change of address so that no employer sponsored coverage is available.

(4) Discontinuation of health benefits to all employees of the applicant's employer.

(5) Expiration of COBRA coverage period.

(6) Coverage provided pursuant to an exemption authorized under subdivision (i) of Section 1367 of the Health and Safety Code.

(d) If the board determines, based on evidence gathered during a reasonable period of program operation, that a substantial share of funds expended for the program are providing health coverage for children that have discontinued employer-based coverage in order to enter the program or if required by the federal government for state plan approval, the board may take actions to increase the three-month time limit specified in subdivision (b), to such a time limit that cannot exceed six months.

12693.72. (a) The board may disapprove an application if it is determined that the children to be covered under the application were covered by an individual health care service plan contract or individual disability insurance policy during a specified period of time prior to the date of application only if required by the federal government for state plan approval. This time limitation period shall not exceed the time period required by the federal government.

(b) If the board imposes the time limitation identified in subdivision (a), it shall also establish exceptions to this limitation in cases where the prior coverage ended due to reasons unrelated to the availability of the program. This shall include, but not be limited to, the prior coverage being pursuant to a health plan operating pursuant to an exemption authorized by subdivision (i) of Section 1367 of the Health and Safety Code.

12693.73. Notwithstanding any other provision of law, children excluded from coverage under Title XXI of the Social Security Act are not eligible for coverage under the program.

12693.74. Subscribers shall continue to be eligible for the program for a period of 12 months from the month eligibility is established.

12693.75. The program shall make use of a simple and easy to understand mail-in application process.

CHAPTER 10. FISCAL INTEGRITY

12693.77. (a) The board shall develop safeguards to assure the fiscal integrity of the program.

(b) The program shall ensure that subscribers are not eligible for no-cost full-scope Medi-Cal coverage. The board may provide data on applicants and subscribers to the State Department of Health Services for determination of Medi-Cal eligibility. The State Department of Health Services shall identify those subscribers enrolled in the program who are concurrently enrolled in Medi-Cal with no share of cost.

(c) Any person who intentionally makes false declarations as to his or her eligibility or any person who intentionally makes false declarations as to eligibility on behalf of any other person seeking eligibility under this part for which that person is not eligible shall be guilty of a misdemeanor.

(d) Plans and providers shall be subject to Section 550 of the Penal Code.

(e) Any person who intentionally makes false declarations as to his or her eligibility or any person who intentionally makes false declarations as to eligibility on behalf of any other person seeking eligibility under this part for which that person is not eligible may be denied coverage for up to one year from the date of the denial of coverage by the board.

CHAPTER 11. PROTECTION AGAINST SUBSTITUTION OF BENEFITS

12693.80. The board shall use due diligence in the creation of participation standards for the program that minimize the incentive for employers or applicants to drop or reduce dependent health coverage.

12693.81. (a) It shall constitute unfair competition for purposes of Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code for an insurer, an insurance agent or broker, or an administrator, as defined in Section 1759, to refer an individual employee or employee's dependent to the program, or arrange for an individual employee or employee's dependent to apply for the program, for the purpose of separating that employee or employee's dependent from group health coverage in connection with the employee's employment.

(b) Any employee applicant in subdivision (a) shall have personal right of action to enforce subdivision (a).

12693.82. It shall constitute an unfair labor practice contrary to public policy, and enforceable under Section 95 of the Labor Code, for any employer to refer an individual employee or employee's dependent to the program, or to arrange for an individual employee or employee's dependent to apply to the program, for the purpose of separating that employee or employee's dependent from group

health coverage provided in connection with the employee's employment.

12693.83. (a) It shall constitute an unfair labor practice contrary to public policy and enforceable under Section 95 of the Labor Code for any employer to change the employee-employer share-of-cost ratio based upon the employee's wage base or job classification or to make any modification of coverage for employees and employee's dependents in order that the employees or employee's dependents enroll in the program established pursuant to this part.

12693.84. For purposes of Sections 12693.82 and 12693.83, group health coverage includes any group disability insurance policy covering hospital, medical, or surgical expenses, group health care service plan contract, or self-insured employee welfare benefit plan.

CHAPTER 12. APPEALS

12693.85. Program decisions described in this section may be appealed to the board. If an applicant believes that a written decision on one of the following specified issues was made in violation of the program statutes or regulations, or other written representation of program policy made to the individual by the program or the board, that individual may file an appeal with the board. Decisions that may be appealed are the following:

(a) A decision that a child is not qualified to participate or continue to participate in the program.

(b) A decision that a child is not eligible for enrollment or continuing enrollment in the program.

(c) A decision as to the effective date of coverage.

12693.86. (a) An appeal shall be filed in writing with the executive director within 60 calendar days of the date of the notice of the decision being appealed.

(b) An appeal shall include all of the following:

(1) A copy of any decision being appealed, or a written statement of the action or failure to act being appealed.

(2) A statement specifically describing the issues that are disputed by the appellant.

(3) A statement specifically describing the program statute or regulation, or other written representation of program policy that the appellant believes the program or board violated.

(4) A statement of the resolution requested by the appellant.

(5) Any other relevant information the appellant wants to include.

(c) Any appeal that does not specifically allege a violation of a program statute or regulation, or other written representation of program policy will be deemed to be a request for program review pursuant to Section 12693.88.

(d) An appeal that specifically alleges a violation of program statute or regulation or other written representation of program

policy, but fails to include any other necessary information, shall be returned to the appellant without review. The appellant may resubmit the appeal. The resubmittal shall be filed within the time limits of subdivision (a) or within 20 calendar days of the receipt of the returned appeal, whichever is later.

12693.87. (a) Any appellant who files an appeal pursuant to Section 12693.85 shall receive an initial administrative review of the appeal.

(b) Administrative reviews of appeals shall be conducted in two steps. Each appeal will be reviewed by the program to determine if the requested resolution is required by the statutes and regulations governing the program, or required in order to be consistent with a written representation of program policy made by the program or the board. If so, the appropriate action will be taken within 30 days of the receipt of the appeal, and the appellant will be notified. If not, the appellant will be so notified within 30 days of the receipt of the appeal and informed that he or she may request review by the executive director. This request must be filed in writing with the executive director within 30 days of the date of the notice of the program determination and shall include the information specified in subdivision (b) of Section 12693.86.

(c) In conducting an administrative review of an appeal, the executive director may contact the appellant and any other party for further information.

(d) The executive director's decision shall be in writing.

(e) The appellant retains the right to request an administrative hearing if the appellant is not satisfied with the decision of the executive director. Such a request shall be filed within 30 calendar days of receipt of the executive director's decision. It shall include a clear and concise statement of what action is being appealed, and the reasons the executive director's decision is not correct.

12693.88. In addition to the appeal process established above, the board shall establish a program review process. If a subscriber or purchasing credit member is not eligible to file an appeal pursuant to Section 12693.85, but wants to have any program decision reviewed, he or she may request that the program review the decision. A review pursuant to this section is separate from and independent of an appeal pursuant to Section 12693.85, and a person that files a request pursuant to this section shall not, thereby, gain any right of appeal. Pursuant to Section 12693.49, any dissatisfaction with an action of a participating health, vision, or dental plan shall be resolved with the plan rather than by requesting program review. When an appeal that requests an administrative hearing is received, the appeal shall be set for hearing as provided in Section 12693.89.

12693.89. (a) Administrative hearings of appeals shall be conducted according to the appeal procedures, including pre- and post-hearing procedures, set forth in Article 3 (commencing with Section 1140) of Chapter 2 of Division 2 of Title 1 of the California

Code of Regulations. Article 3 (commencing with Section 1140) is hereby incorporated by reference, subject to the following modifications:

(1) Reference to the Health and Welfare Agency or the component department shall be deemed reference to the Managed Risk Medical Insurance Board.

(2) Reference to the private nonprofit human service organization shall be deemed reference to the appellant.

(3) Reference to Health and Safety Code sections providing the bases, grounds, authorization, or procedures for appeals shall be deemed reference to the bases and authorization, for appeal found in Section 12693.85 and the appeal procedures found in this section.

(4) The 30-day time period specified in subdivision (b) of Section 1140 of Title 1 of the California Code of Regulations shall be extended to 60 days, and the 10-day time period in subdivision (a) of Section 1141 of Title 1 of the California Code of Regulations shall be extended to 30 days.

(5) If the proposed decision submitted to the board is not adopted as the decision, the board may itself decide the case on the record, or may refer the case to the same hearing officer to take additional evidence. If the case is referred back to the hearing officer, the hearing officer shall prepare a new proposed decision based on the additional evidence and the record of the prior hearing.

(6) The decision of the board shall be issued within 90 days following the initial hearing or, if the case is referred back to the hearing officer, within 90 days of the second hearing.

(b) The board may elect to have a hearing conducted by an Administrative Law Judge employed by the Office of Administrative Hearings pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

CHAPTER 13. HEALTHY FAMILIES ADVISORY BOARD

12693.90. (a) The board shall appoint a 14-member advisory panel to advise the board, the chair of which may serve as an ex officio, nonvoting member of the board. The panel shall be appointed and ready to perform its duties by no later than February 1, 1998.

(b) The membership of the advisory panel shall be composed of all of the following:

(1) Three representatives from the subscriber population.

(2) One physician and surgeon who is board certified in pediatrics.

(3) One physician and surgeon who is board certified in the area of family practice medicine.

(4) One representative from a licensed nonprofit primary care clinic.

(5) One representative from a licensed hospital that is on the disproportionate share list maintained by the State Department of Health Services.

(6) One representative of the mental health provider community.

(7) One representative of the substance abuse provider community.

(8) One representative of the county public health provider community.

(9) One representative from the education community.

(10) One representative from the health plan community.

(11) One representative from the business community.

(12) One representative from an eligible family with children with special needs.

(c) The advisory board members shall have demonstrated expertise in the provision of health-related services to children aged 18 years and under, as applicable.

(d) The advisory board members shall be composed of representatives of the geographic, cultural, economic, and other social factors of the state.

(e) The panel shall elect, from among its members, its chair.

(f) The panel shall have all of the following powers and duties:

(1) To advise the board on all policies, regulations, operations, and implementation of the program.

(2) To consider all written recommendations of the panel and respond in writing when the board rejects the advice of the panel.

(3) To meet at least quarterly, unless deemed unnecessary by the chair.

(g) The members of the panel shall be reimbursed for all necessary travel expenses associated with the activities of the panel.

(h) The members of the panel who represent the subscriber population may receive per diem compensation if they are otherwise economically unable to meet panel responsibilities.

CHAPTER 14. RURAL DEMONSTRATION PROJECT

12693.91. (a) The State Department of Health Services, in conjunction with the Managed Risk Medical Insurance Board, the County Medical Services Program board, and the Rural Health Policy Council, may develop and administer up to five demonstration projects in rural areas that are likely to contain a significant level of uninsured children, including seasonal and migratory worker dependents.

(b) The purpose of the demonstration projects shall be to fund rural collaborative health care networks to alleviate unique problems of access to health care in rural areas.

(c) The State Department of Health Services, in conjunction with the Managed Risk Medical Insurance Board and Rural Health Policy Council, shall establish the criteria and standards for eligibility to be

used in requests for proposals or requests for application, the application review process, determining the maximum amount and number of grants to be awarded, preference and priority of projects, and compliance monitoring after receiving comment from the public.

(d) This section shall only become operative upon federal approval of the state plan or subsequent amendments for the program and approval of federal financial participation.

(e) This section shall become inoperative on July 1, 2003.

CHAPTER 15. REPORTS

12693.92. (a) The program shall prepare an annual report in conformance with the requirements of Section 2108 of Title XXI of the Social Security Act (P.L. 105-33). A copy of the report shall be provided to the Legislature and other interested parties.

(b) As soon as possible, but no later than July 1, 2000, the board shall include in its annual report information on (1) how assurance of preventive services by health plans and health care providers is achieved; (2) the performance of health plans and providers in providing preventive services and addressing barriers to service delivery; and (3) the mechanism or mechanisms that will be used to identify changes over time in the health status of children enrolled in the program. Beginning no later than July 1, 2001, the report shall include information about changes in the health status of children participating in the program.

(c) The board shall immediately provide the fiscal and policy committees of the Legislature with a copy of their submittal to the federal government to meet the requirements for state plan provisions as contained in Chapter 1 of Title XXI of the Social Security Act. Any and all subsequent amendments to the state plan shall also be provided accordingly.

12693.93. The board shall prepare an evaluation of the program and other state efforts to expand coverage to children in conformance with Section 2108 of Title XXI of the Social Security Act. The evaluation shall incorporate measurement of the delivery of preventive services by health plans and health care providers and assessment of changes over time in the health status of children participating in the program. A copy of the report shall be provided to the Legislature and other interested parties.

12693.94. On or before January 15, 1999, the board shall report to the Legislature on the policies and procedures that would be necessary to ensure the feasibility of allowing families with incomes above 200 percent of the federal poverty level to buy coverage through the program, at their cost. The board shall review the need for changes in both government and private health coverage programs and make recommendations to the Legislature on specific statutory and regulatory changes that would be required.

12693.95. The board in consultation with the Department of Alcohol and Drug Programs shall provide the Legislature by April 15, 1998, a proposal assessing the viability of providing additional drug and alcohol treatment services for children enrolled in the program.

If the board determines that it is feasible to provide additional federal funds received pursuant to Title XXI (commencing with Section 2101) of the Social Security Act to counties to finance drug and alcohol services and required federal approval is obtained, the board shall negotiate with participating health plans to establish memoranda of understanding between plans and counties to facilitate referral of children in need of these services.

CHAPTER 16. FUNDS

12963.96. (a) There is hereby created in the State Treasury the Healthy Families Fund which is, notwithstanding Section 13340 of the Government Code, continuously appropriated to the board for the purposes specified in this part.

(b) The board shall authorize the expenditure from the fund any state funds, federal funds, or family contributions deposited into the fund.

(c) Notwithstanding any other provision of law, this part shall be implemented only if, and to the extent that, as provided under Title XXI of the Social Security Act, federal financial participation is available and state plan approval is obtained.

(d) Nothing in this part is intended to establish an entitlement for individual coverage.

12963.97. The State Department of Health Services and the board may explore and utilize any options available under federal law to allow the use of charitable funding as a match for federal funds for use in the provision of coverage by private and public not-for-profit organizations consistent with the provisions of this part.

CHAPTER 17. REPEAL

12693.99. This part 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. This act shall become operative only if SB 903 is enacted on or before January 1, 1998.

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 624

An act to amend Sections 14067 and 14148.75 of, and to add Sections 14005.23, 14011.1 and 14016.11 to, the Welfare and Institutions Code, relating to human services.

[Approved by Governor October 2, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Section 14005.23 is added to the Welfare and Institutions Code, to read:

14005.23. To the extent federal financial participation is available, the department shall implement the following options when determining eligibility for qualified children under Section 1905(n)(2) of the federal Social Security Act (42 U.S.C. Sec. 1396d(n)(2)):

(a) Disregard all family income up to 100 percent of the federal poverty level for the size of the family.

(b) Adopt a birth date earlier than September 30, 1983, as permitted by 42 U.S.C. 1396d(n)(2), so that the age requirement is met for those who have not yet attained the age of 19 years.

SEC. 2. Section 14011.1 is added to the Welfare and Institutions Code, to read:

14011.1. (a) The department shall, not later than July 1, 1998, create and implement a simplified application package for the following Medi-Cal applicants, as described under Section 1902(*l*)(3) of the federal Social Security Act (42 U.S.C. Sec. 1396a(*l*)(3)):

(1) Children.

(2) Pregnant women and infants.

(b) In developing the application package described in this section, the department shall seek input from the Managed Risk Medical Insurance Board and persons with expertise, including beneficiary representatives, counties, and beneficiaries.

(c) The department shall permit an applicant to whom subdivision (a) applies to apply for benefits by mailing in the simplified application package. The package shall include, but not be limited to, the following items, as they now exist or may be changed from time to time:

(1) An application for cash aid, food stamps, and Medi-Cal.

(2) A statement of citizenship, alienage, and immigration status.

(3) A statement of facts.

(4) Important information for persons requesting Medi-Cal.

(5) The Child Health and Disability Prevention Program brochure.

(d) The department shall not require an applicant who submits a simplified application pursuant to subdivision (c) to complete a face-to-face interview, except for good cause, a suspicion of fraud, or to complete the application process. Every application package shall contain a notification of the applicant's right to complete a face-to-face interview.

(e) The department shall implement this section only to the extent that its provisions are not violative of the requirements of federal law, and only to the extent that federal financial participation is not jeopardized.

SEC. 3. Section 14016.11 is added to the Welfare and Institutions Code, to read:

14016.11. (a) When a child under 19 years of age is found ineligible to receive benefits without a share of cost upon redetermination of eligibility, the department shall make use of the federal option under Section 1902(e)(12) of the federal Social Security Act (42 U.S.C. Sec. 1396a(e)(12)), to provide for one month of Medi-Cal eligibility at no share of cost.

(b) Nothing in this section shall be construed to authorize the payment of share of cost from state funds.

SEC. 4. Section 14067 of the Welfare and Institutions Code is amended to read:

14067. (a) The department, in conjunction with the Managed Risk Medical Insurance Board, shall develop and conduct a community outreach and education campaign to help families learn about, and apply for, Medi-Cal and the Healthy Families program of the Managed Risk Medical Insurance Board, subject to the requirements of federal law. In conducting this campaign, the department may seek input from, and contract with, various entities and programs that serve children, including, but not limited to, the State Department of Education, counties, Women, Infants, and Children program agencies, Head Start and Healthy Start programs, and community-based organizations that deal with potentially eligible families and children to assist in the outreach, education, and application completion process.

(b) The outreach and education campaign shall be established and implemented as of February 18, 1998.

(c) In implementing this section, the department may amend any existing or future media outreach campaign contract that it has entered into pursuant to Section 14148.5. Notwithstanding any other provision of law, any such contract entered into, or amended, as required to implement this section, shall be exempt from the approval of the Director of General Services and from the provisions of the Public Contract Code.

SEC. 5. Section 14148.75 of the Welfare and Institutions Code is amended to read:

14148.75. At the earliest date that it is administratively feasible, the department shall adopt the federal medicaid option under Section 1902(*l*)(3) of the federal Social Security Act (42 U.S.C. Sec. 1396a(*l*)(3)) to waive the use of a resource standard for determining the eligibility of pregnant women, infants, and children.

SEC. 6. The State Department of Health Services may adopt emergency regulations to implement this act in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The initial adoption of emergency regulations following the effective date of this section and on the readoption of those initial regulations shall be deemed to be emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare. Initial emergency regulations and the first readoption of those regulations shall be exempt from review by the Office of Administrative Law. The emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations and shall remain in effect for no more than 180 days.

SEC. 7. Notwithstanding any other provision of law, this act shall be implemented only if, and to the extent that, the State Department of Health Services determines that federal financial participation, as provided under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.), is available.

SEC. 8. This act shall become operative only if A.B. 1126 of the 1997–98 Regular Session is enacted and becomes operative.

SEC. 9. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

CHAPTER 625

An act to amend Section 101755 of the Health and Safety Code, to add Sections 12693.105, 12693.16, and 12693.365 to the Insurance Code

and to amend Sections 14087.51, 14087.52, and 14087.53 of the Welfare and Institutions Code, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Section 101755 of the Health and Safety Code is amended to read:

101755. Notwithstanding any other provision of law, the state or any state agency may enter into contracts with the authority for the authority to obtain or arrange for health care under the authority's health care systems, for all persons who are eligible to receive medical benefits under the Medi-Cal Act, as set forth in Section 14000 et seq., of the Welfare and Institutions Code, and to enter into contracts for the provision of health care services to subscribers in the Healthy Families Program, in Santa Barbara County through waiver, pilot project, or otherwise.

SEC. 2. Section 12693.105 is added to the Insurance Code, to read:

12693.105. A health care service plan, as defined in subdivision (b) of Section 12693.10, shall include a plan operating as a geographic managed care plan.

SEC. 3. Section 12693.16 is added to the Insurance Code, to read:

12693.16. "Geographic managed care plan" means an entity that is operating pursuant to a contract entered into under Article 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code.

SEC. 4. Section 12693.365 is added to the Insurance Code, to read:

12693.365. Geographic managed care plans that have a contract with the Department of Health Services, that contract with the program, and that are licensed by the Department of Corporations but do not have a commercial license from the Department of Corporations, may contract with the board for a maximum of 12 months. During this 12-month period, those plans shall be required to be in good standing with the Department of Corporations and shall demonstrate to the board that they are making a good faith effort to obtain a commercial license from the Department of Corporations. In their application to the program, those plans shall provide assurance of their standing with the Department of Corporations and shall outline their plans for obtaining commercial licensure.

SEC. 5. Section 14087.51 of the Welfare and Institutions Code is amended to read:

14087.51. It is necessary that a special commission be established in San Mateo County and in any other county designated by the California Medical Assistance Commission in order to meet the problems of the delivery of publicly assisted medical care in the

counties and to demonstrate ways of promoting quality care and cost efficiency.

The Board of Supervisors of San Mateo County and of the designated counties may, by ordinance, establish commissions to negotiate the exclusive contracts specified in Section 14087.5 and to arrange for the provision of health care services provided pursuant to this chapter, and to enter into contracts for the provision of health care services to subscribers in the Healthy Families Program. If the board of supervisors elects to enact this ordinance, all rights, powers, duties, privileges, and immunities vested in a county by this article shall be vested in the county commission. Any reference in this article to "county" shall mean a commission established pursuant to this section.

The enabling ordinance shall specify the membership of the county commission, the qualifications for individual members, and such other matters as the board of supervisors deems necessary or convenient for the conduct of the county commission's activities. All commissioners shall be appointed by majority vote of the board of supervisors and shall serve at the pleasure thereof. The board of supervisors may appoint no more than two of its own members to serve on the commission.

As an alternative to establishing a separate commission, the enabling ordinance may designate the board of supervisors itself as the commission authorized by this article.

SEC. 6. Section 14087.52 of the Welfare and Institutions Code is amended to read:

14087.52. (a) It is necessary that a special commission be established in San Bernardino County in order to meet the problems of the delivery of publicly assisted medical care in the county and to demonstrate ways of promoting quality care and cost efficiency. Because there is no general law under which such a commission could be formed, the adoption of a special act and the formation of a special commission is required.

(b) The Board of Supervisors of San Bernardino County may, by ordinance, establish a commission to negotiate the exclusive contract specified in Section 14087.5 and to arrange for the provision of health care services provided pursuant to this chapter, and to enter into contracts for the provision of health care services to subscribers in the Healthy Families Program. If the board of supervisors elects to enact this ordinance, all rights, powers, duties, privileges, and immunities vested in a county by this article shall be vested in the county commission. Any reference in this article to "county" shall mean the commission established pursuant to this section.

(c) It is the intent of the Legislature that if such a commission is formed, the County of San Bernardino shall, with respect to its medical facilities and programs, occupy no greater or lesser status than any other health care provider in negotiating with the commission for contracts to provide health care services.

(d) The enabling ordinance shall specify the membership of the county commission, the qualifications for individual members, the manner of appointment, selection, or removal of commissioners, and how long they shall serve, and any other matters as the board of supervisors deems necessary or convenient for the conduct of the county commission's activities. The commission so established shall be considered an entity separate from the county, shall file the statement required by Section 53051 of the Government Code, and shall have, in addition to the rights, powers, duties, privileges, and immunities previously conferred, the power to acquire, possess, and dispose of real or personal property, as may be necessary for the performance of its functions, to employ personnel and contract for services required to meet its obligations, and to sue or be sued. Any obligations of the commission, statutory, contractual, or otherwise, shall be the obligations solely of the commission and shall not be the obligations of the county or of the state unless expressly provided for in a contract between the commission and the county or state.

(e) Upon creation, the commission may borrow from the county, and the county may lend the commission funds, or issue revenue anticipation notes to obtain those funds necessary to commence operations.

(f) In the event the commission may no longer function for the purposes for which established, at such time as the commission's then existing obligations have been satisfied or the commission's assets have been exhausted, the board of supervisors may by ordinance terminate the commission.

(g) Prior to the termination of the commission, the board of supervisors shall notify the State Department of Health Services of its intent to terminate the commission. The department shall conduct an audit of the commission's records within 30 days of notification to determine the liabilities and assets of the commission. The department shall report its findings to the board within 10 days of completion of the audit. The board shall prepare a plan to liquidate or otherwise dispose of the assets of the commission and to pay the liabilities of the commission to the extent of the commission's assets, and present the plan to the department within 30 days upon receipt of these findings.

(h) Upon termination of the commission by the board, the County of San Bernardino shall manage any remaining assets of the commission until superseded by a department approved plan. Any liabilities of the commission shall not become obligations of the county upon either the termination of the commission or the liquidation or disposition of the commission's remaining assets.

(i) Any assets of the commission shall be disposed of pursuant to provisions contained in the contract entered into between the state and the commission pursuant to this article.

SEC. 7. Section 14087.53 of the Welfare and Institutions Code is amended to read:

14087.53. (a) It is necessary that a special commission be established in Ventura County in order to meet the problems of the delivery of publicly assisted medical care in the county and to demonstrate ways of promoting quality care and cost efficiency. Because there is no general law under which such a commission could be formed, the adoption of a special act and the formation of a special commission is required.

(b) The Board of Supervisors of Ventura County may, by ordinance, establish a commission to negotiate the exclusive contract specified in Section 14087.5 and to arrange for the provision of health care services provided pursuant to this chapter, and to enter into contracts for the provision of health care services to subscribers in the Healthy Families Program. If the board of supervisors elects to enact this ordinance, all rights, powers, duties, privileges, and immunities vested in a county by this article shall be vested in the county commission. Any reference in this article to "county" shall mean the commission established pursuant to this section.

(c) The enabling ordinance shall specify the membership of the county commission, the qualifications for individual members, the manner of appointment, selection, or removal of commissioners, and how long they shall serve, and any other matters as the board of supervisors deems necessary or convenient for the conduct of the county commission's activities. The commission so established shall be considered an entity separate from the county, shall file the statement required by Section 53051 of the Government Code, and shall have, in addition to the rights, powers, duties, privileges, and immunities previously conferred, the power to acquire, possess, and dispose of real or personal property, as may be necessary for the performance of its functions, to employ personnel and contract for services required to meet its obligations, and to sue or be sued. Any obligations of the commission, statutory, contractual, or otherwise, shall be the obligations solely of the commission and shall not be the obligations of the county or of the state.

(d) Upon creation, the commission may borrow from the county and the county may lend the commission funds, or issue revenue anticipation notes to obtain those funds necessary to commence operations.

(e) In the event the commission may no longer function for the purposes for which established, at such time as the commission's then existing obligations have been satisfied or the commission's assets have been exhausted, the board of supervisors may by ordinance terminate the commission.

(f) Prior to the termination of the commission, the board of supervisors shall notify the State Department of Health Services of its intent to terminate the commission. The department shall conduct an audit of the commission's records within 30 days of notification to determine the liabilities and assets of the commission. The department shall report its findings to the board within 10 days of

completion of the audit. The board shall prepare a plan to liquidate or otherwise dispose of the assets of the commission and to pay the liabilities of the commission to the extent of the commission's assets, and present the plan to the department within 30 days upon receipt of these findings.

(g) Any assets of the commission shall be disposed of pursuant to provisions contained in the contract entered into between the state and the commission pursuant to this article.

(h) It is the intent of the Legislature that if such a commission is formed, the County of Ventura shall, with respect to its medical facilities and programs, occupy no greater or lesser status than any other health care provider in negotiating with the commission for contracts to provide health care services.

(i) Upon termination of the commission by the board, the County of Ventura shall manage any assets of the commission until superseded by a department approved plan. Any liabilities of the commission shall not become obligations of the county upon either the termination of the commission or the liquidation or disposition of the commission's remaining assets.

SEC. 8. (a) There is hereby appropriated from the General Fund the sum of one million seven hundred seventy thousand dollars ($1,770,000), for the 1997–98 fiscal year, to be allocated as soon after the effective date of the act enacting this section as practical. These funds shall be allocated as follows:

(1) Five hundred sixty thousand dollars ($560,000) to the Managed Risk Medical Insurance Board for the establishment of the Healthy Families Program as described in Assembly Bill 1126 of the 1997–98 Regular Session.

(2) One million two hundred ten thousand dollars ($1,210,000) to the State Department of Health Services for administrative costs to implement changes in Medi-Cal and to develop and operate the education and outreach campaign contained in Senate Bill 903 of the 1997–98 Regular Session.

(b) There is hereby appropriated from the federal trust fund the sum of three million one hundred thirty-two thousand dollars ($3,132,000) for the 1997–98 fiscal year, to be allocated as soon after the effective date of the act enacting this section as practical. These funds shall be allocated as follows:

(1) One million forty thousand dollars ($1,040,000) to the Managed Risk Medical Insurance Board for the establishment of the Healthy Families Program as described in Assembly Bill 1126 of the 1997–98 Regular Session.

(2) Two million ninety-two thousand dollars ($2,092,000) to the State Department of Health Services for administrative costs to implement changes in Medi-Cal and to develop and operate the education and outreach campaign contained in Senate Bill 903 of the 1997–98 Regular Session.

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 assist in implementing the Healthy Families Program as quickly as possible, thereby extending health insurance coverage to uninsured children, it is necessary that this act take effect immediately.

CHAPTER 626

An act to repeal and add Section 14005.23 of the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor October 2, 1997. Filed with Secretary of State October 3, 1997.]

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

SECTION 1. Section 14005.23 of the Welfare and Institutions Code, as added by Senate Bill 903 of the 1997–98 Regular Session, is repealed.

SEC. 2. Section 14005.23 is added to the Welfare and Institutions Code, to read:

14005.23. To the extent federal financial participation is available, the department shall, when determining eligibility for children under Section 1396a(*l*)(1)(D) of Title 42 of the United States Code, designate a birth date by which all children who have not attained the age of 19 years will meet the age requirement of Section 1396a(*l*)(1)(D) of Title 42 of the United States Code.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

SEC. 4. It is the intent of Section 2 of this act to clarify the meaning of Section 14005.23 of the Welfare and Institutions Code, as added by Senate Bill 903.

SEC. 5. This act shall become operative only if Senate Bill 903 is chaptered during 1997.

CHAPTER 627

An act to add Chapter 4.2 (commencing with Section 10830) to Part 2 of Division 9 of, the Welfare and Institutions Code, relating to public social services.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. It is the intent of the Legislature to implement revisions to state law resulting from Public Law 104-193, including restricted payments provisions under the Aid to Families with Dependent Children program or any successor program.

SEC. 2. Chapter 4.2 (commencing with Section 10830) is added to Part 2 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 4.2. KERN COUNTY VENDOR PAYMENT DEMONSTRATION PROJECT

10830. The director may conduct a demonstration project in Kern County, with the approval of the county, pertaining to restricted payments under Chapter 2 (commencing with Section 11200) of Part 3.

10831. The demonstration project provided for pursuant to this chapter shall meet all of the following requirements:

(a) The demonstration project shall operate for not more than a period of three years.

(b) A maximum of 2,000 assistance units shall participate in the demonstration project.

(c) Notwithstanding Section 11274, the county may make direct rental payments under this chapter without the need for a finding that a recipient has mismanaged funds. In addition, direct rental payments may, notwithstanding Section 11274, be made for a period in excess of 12 months.

10832. The director shall conduct an evaluation of the demonstration project provided for in this chapter. The evaluation shall measure all of the following:

(a) The cost-effectiveness of the demonstration project.

(b) The satisfaction of recipients, county staff, and landlords with the demonstration project.

(c) Any effect of the demonstration project on the goal of assisting recipients to become self-sufficient.

10833. The demonstration project provided for in this chapter shall comply with Article 1 (commencing with Section 18230) of Chapter 3.3 of Part 6.

SEC. 3. Notwithstanding any other provision of law, Tulare County shall not be liable to repay the state the unpaid balance as of July 1, 1997, of the state audit claim resulting from the fiscal monitoring review of Tulare County conducted in April 1995 concerning the implementation of an automated welfare system in Tulare County.

CHAPTER 628

An act to add Sections 44205 and 44205.5 to the Education Code, relating to education.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 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 Credentialed Out-of-State Teacher Recruitment and Retention Act of 1997.

SEC. 2. Section 44205 is added to the Education Code, to read:

44205. Notwithstanding any other provision of law:

(a) (1) It is the intent of the Legislature that both of the following occur:

(A) That this section provide flexibility to enable school districts to recruit credentialed out-of-state elementary, secondary, and special education teachers to relocate to California.

(B) That any and all teachers hired in California pursuant to this section fully meet the requirements of the State of California.

(2) It is not the intent of the Legislature either to address the issue of interstate reciprocity of credentialing requirements or to dilute current California requirements for credentialed teachers.

(b) Any teacher from a state other than California may be employed by a school district pursuant to this section to provide instructional services if each of the following conditions are met:

(1) The teacher holds a valid credential that requires the teacher to meet requirements equivalent to the multiple or single subject teaching credential requirements in paragraphs (1) and (2) of subdivision (c) of Section 44227 or the special education credential requirements described in Section 44265.

(2) The credential from the state other than California is valid at the time the teacher commences to provide instructional services for the school district.

(3) The teacher is hired after the successful completion of a criminal background check conducted pursuant to Section 44332.6, by the governing board of the school district offering the teacher employment.

(c) The Commission on Teacher Credentialing shall grant a five-year preliminary multiple or single subject teaching credential or education specialist credential to a teacher meeting the requirements of subdivision (b) if the teacher has received an offer of employment from a California school district, county office of education, nonpublic, nonsectarian school or agency, or school operating under the direction of a California state agency.

(d) At or before the completion of one school year of teaching pursuant to this section, a teacher shall pass the state basic skills proficiency test, pursuant to Section 44252, administered by the Commission on Teacher Credentialing in order to be eligible to continue teaching pursuant to this section.

(e) At or before the completion of four school years of teaching pursuant to this section, a teacher shall, to the satisfaction of the Commission on Teacher Credentialing, meet the requirements for subject matter competence, for completion of a course or examination on the various methods of teaching reading, and for completion of a course or examination on the Constitution of the United States, within the meaning of paragraphs (3), (4), and (6), respectively, of subdivision (c) of Section 44227, in order to be eligible to continue teaching pursuant to this section. Additionally, to be eligible to continue teaching on an education specialist credential, the teacher shall also complete the requirements for nonspecial education pedagogy and a supervised field experience program in general education.

(f) At or before the completion of five school years of teaching pursuant to this section, a teacher shall meet the requirements for completion of the study of health education, for completion of study and field experience in methods of delivering appropriate educational services to pupils with exceptional needs in regular education programs, and for completion of the study of computer-based technology, within the meaning of paragraphs (1), (2), (3), and (4), respectively, of subdivision (c) of Section 44259. A teacher holding a specialist credential pursuant to this section shall complete a program for the Professional Level II credential accredited by the Committee on Accreditation, established pursuant to Section 44373, including the requirements specified in this subdivision and subdivision (e).

(g) If a teacher fails to meet any of the requirements of subdivisions (b), (c), (d), (e), and (f), the Commission on Teacher Credentialing shall inactivate a preliminary credential granted pursuant to this section until the requirement is met. The time requirements contained in subdivisions (e) and (f) shall not be

stayed by the inactivation of a preliminary credential under this subdivision.

(h) The Commission on Teacher Credentialing shall issue a professional clear credential to a teacher who meets the requirements of subdivisions (b), (c), (d), (e), and (f) and submits an application with appropriate fees and documentation of the completion of all requirements pursuant to this section.

SEC. 3. Section 44205.5 is added to the Education Code, to read:

44205.5. (a) For purposes of Section 44205, a fee shall be levied and collected by the commission for the issuance of the five-year preliminary credential for out-of-state teachers. Commencing January 1, 1998, the fee for the issuance of the five-year preliminary credential for out-of-state teachers shall be two hundred dollars ($200), in addition to any other fees required by statute, as appropriate.

(b) The proceeds of the fee levied and collected pursuant to subdivision (a) shall be used to offset the costs of the out-of-state teacher credential program established by, and to develop a tracking system to ensure compliance with, Section 44205.

(c) Annually, as part of the budget review process, the Director of Finance shall recommend to the Legislature a level for the fee to be levied and collected pursuant to subdivision (a) so that the fee may generate sufficient revenues to meet the goals set forth in subdivision (b).

CHAPTER 629

An act to amend Section 17285 of the Education Code, relating to school facilities.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 17285 of the Education Code is amended to read:

17285. (a) Notwithstanding any provision of law except Sections 17286, 17287, 17405, and this section, a leased building that does not meet the requirements of Section 17280 may not be used as a school building, as defined in Section 17283, after September 1, 1990.

(b) A school district may lease a commercial building prior to January 1, 2003, that does not meet the requirements of Section 17280, for use as a school building, as defined in Section 17283, if the governing board of the district finds that all of the following conditions have been met:

(1) The building was constructed in accordance with seismic safety standards for commercial buildings constructed within an earthquake zone.

(2) The building permit for the initial construction of the building was issued on or after January 1, 1990.

(3) A structural engineer has inspected the building and submitted a report to the governing board of the school district that certifies that the building is in substantial compliance with the requirements of the Field Act. This certification requirement is satisfied if the structural engineer affixes his or her seal of approval to the report and he or she attests in that report that to the best of his or her knowledge:

(A) He or she has reviewed the design calculations, construction documents, and the local government construction inspection records of the building to the extent available.

(B) He or she has authorized testing and has observed or reviewed the test results and the inspections of an adequate sample of the structure's welds, anchor bolts, and other structural elements.

(C) He or she has observed that the overhead nonstructural elements, including, but not limited to, light fixtures, heating, and air-conditioning diffusers are adequately braced or anchored.

The governing board of the school district shall submit the report to the Division of the State Architect for its review. The Division of the State Architect has one month to review the report for compliance with the above requirements, and to provide feedback to the structural engineer regarding any insufficiencies with the report, and whether or not the building is in substantial compliance with the requirements of the Field Act. If the Division of the State Architect does not respond within one month of the final and complete report being submitted, the Division of the State Architect will be deemed to have concurred with the structural engineer's report. A final decision by the governing board of the school district to occupy the building for school purposes shall not occur until the governing board has reviewed and considered the feedback of the Division of the State Architect, or the one month review period has passed.

No member of the governing board of a school district, nor any employee of a school district, shall be held personally liable for injury to persons or damage to property resulting from the fact that the governing board of the school district used a commercial building pursuant to this subdivision for a school and the building was not constructed under the requirements of Section 17280. This exemption from personal liability for members of the governing board and employees of a school district is not intended to limit the liability of the school district for injury to persons or damage to property resulting from the fact that the governing board or any employee of the school district used a commercial building pursuant to this subdivision for a school and the building was not constructed

under the requirements of Section 17280. This exemption from personal liability for members of the governing board and employees of a school district is not intended to limit the liability of the school district, the governing board or the district's employees pursuant to Section 835 of the Government Code. Section 17312 is not applicable to a person who, pursuant to this section, leases or uses a building for a school building that meets the requirements of this section but does not meet the requirements of Section 17280. Approval and use of a building pursuant to subdivision (b) of Section 17285 does not constitute a violation of the Field Act.

(c) A building leased pursuant to Section 17280 may be used after September 1, 1991, as a regional occupational center or program that does not meet the requirements of Section 17280, provided the building satisfies all of the following conditions:

(1) The facility is one of the following:

(A) A single-story, wood-framed structure.

(B) A single-story, light steel frame structure.

(C) A structure for which a structural engineer has submitted a report that certifies that substantial structural hazards do not exist, as to that structure. The governing board of the regional occupational center or program, as provided for under Section 52310.5, shall review the report prior to approval of the lease and may reject the report if there is any evidence of fraud regarding the facts in the report.

(2) The building or structure complies with all applicable local building standards and all applicable local health and safety standards in the community in which it is located.

(3) The governing board of the regional occupational center or program, as provided for under Section 52310.5, certifies to the State Allocation Board that reasonable efforts have been made to locate the regional occupational center or program in facilities that conform to the seismic safety standards set forth in Part 2 (commencing with Section 2-101), Part 3 (commencing with Section 3-089-1), Part 4 (commencing with Section 4-403), and Part 5 (commencing with Section 5-102), of Title 24 of the California Code of Regulations.

(d) On or before September 1, 1994, and every three years thereafter, each governing board of a regional occupational center or program shall report to the State Allocation Board on the facilities utilized for the operation of that center or program and on efforts to place the center or program in facilities that conform to the seismic safety standards described in paragraph (3) of subdivision (b).

CHAPTER 630

An act to add and repeal Article 2 (commencing with Section 18711) of Chapter 3 of Part 10.2 of Division 2 of the Revenue and

Taxation Code, and to amend Section 18969 of the Welfare and Institutions Code, relating to taxation.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Article 2 (commencing with Section 18711) is added to Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

Article 2. State Children's Trust Fund

18711. (a) Any individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the State Children's Trust Fund.

(b) The contribution shall be in full dollar amounts and may be made individually by each signatory on the joint return.

(c) A designation under subdivision (a) shall be made for any taxable year on the initial return for that taxable year, and once made shall be irrevocable. In the event that payments and credits reported on the return, together with any other credits associated with the taxpayer's account do not exceed the tax liability, if any, shown thereupon, the return shall be treated as though no designation had been made. In the event that no designee is specified, the contribution shall, after reimbursement of the direct actual costs of the Franchise Tax Board for the collection and administration of funds under this article, be transferred to the General Fund. The individual shall be notified in cases in which the discrepancy between the amount actually available for designation and the amount designated exceeds ten dollars ($10).

(d) If an individual designates a contribution to more than one account, and the amount available is insufficient to satisfy the total amount designated, the contribution shall be allocated among the designees on a pro rata basis.

(e) The Franchise Tax Board shall revise the form of the return to include a space labeled the "State Children's Trust Fund For the Prevention of Child Abuse" to allow for the designation permitted under subdivision (a).

(f) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

18712. (a) The Franchise Tax Board shall determine annually the total amount designated pursuant to this article and notify the Controller of that amount.

(b) The Controller shall transfer that amount, less the direct, actual costs of the Franchise Tax Board for the collection and

administration of funds under this article, to the State Children's Trust Fund. The Controller shall transfer, upon appropriation by the Legislature, the amount of the board's costs to the board.

18713. It is the intent of the Legislature that this article create an additional source of funding for a specified purpose. The funds generated by this article shall not be used in place of funds from other sources which are available for appropriation to the State Children's Trust Fund.

18714. This article applies to taxable years beginning on or after January 1, 1997.

18715. (a) This article shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes 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 two hundred fifty thousand dollars ($250,000) for taxable years beginning in 1997, or the adjusted amount specified in subdivision (c), as may be applicable, then this article is repealed with respect to taxable years beginning on or 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) For each calendar year, beginning with calendar year 1998, the Franchise Tax Board shall adjust, on or before September 1 of that calendar year, the minimum estimated contribution amount specified in subdivision (b) as follows:

(1) The minimum estimated contribution amount for the calendar year shall be an amount equal to the product of the minimum estimated contribution amount for the prior September 1 multiplied by the inflation factor adjustment as specified in paragraph (2) of subdivision (h) of Section 17041, rounded off to the nearest dollar.

(2) The inflation factor adjustment used for the calendar year shall be based on the figures for the percentage change in the California Consumer Price Index received on or before August 1 of the calendar year pursuant to paragraph (1) of subdivision (h) of Section 17041.

(d) 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.

SEC. 2. Section 18969 of the Welfare and Institutions Code is amended to read:

18969. (a) There is hereby created in the State Treasury a fund which shall be known as the State Children's Trust Fund. The fund shall consist of funds received from a county pursuant to Section 18968, funds collected by the state and transferred to the fund pursuant to subdivision (b) of Section 103625 of the Health and Safety

Code and Article 2 (commencing with Section 18711) of Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, grants, gifts, or bequests made to the state from private sources to be used for innovative and distinctive child abuse and neglect prevention and intervention projects and money appropriated to the fund for this purpose by the Legislature. The State Registrar may retain a percentage of the fees collected pursuant to Section 10605 of the Health and Safety Code, not to exceed 10 percent, in order to defray the costs of collection. The Franchise Tax Board may retain up to 5 percent of the taxpayer contributions to the fund made pursuant to Article 2 (commencing with Section 18711) of Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, to reimburse the board for the costs of administering that article.

(b) (1) Except as provided in paragraph (2) and notwithstanding Section 13340 of the Government Code, money in the State Children's Trust Fund is continuously appropriated without regard to fiscal years to the State Department of Social Services for the purpose of funding child abuse and neglect prevention and intervention programs. The department may not supplant any federal, state, or county funds with any funds made available through the State Children's Trust Fund. The department shall use no more than 5 percent of the funds appropriated pursuant to this section for administrative costs.

(2) Funds transferred to the State Children's Trust Fund pursuant to Article 2 (commencing with Section 18711) of Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code shall be appropriated by the Legislature.

(c) The department may establish positions as needed for the purpose of implementing and administering child abuse and neglect prevention and intervention programs that are funded by the State Children's Trust Fund. However, the department shall use no more than 5 percent of the funds appropriated pursuant to this section for administrative costs.

(d) No children's trust fund money shall be used to supplant state General Fund money for any purpose.

(e) It is the intent of the Legislature that the State Children's Trust Fund provide for all of the following:

(1) The development of a public-private partnership by encouraging consistent outreach to the private foundation and corporate community.

(2) Funds for large-scale dissemination of information that will promote public awareness regarding the nature and incidence of child abuse and the availability of services for intervention. These public awareness activities shall include, but not be limited to, the production of public service announcements, well designed posters, pamphlets, booklets, videos, and other media tools.

(3) Research and demonstration projects that explore the nature and incidence and the development of long-term solutions to the problem of child abuse.

(4) The development of a mechanism to provide ongoing public awareness through activities that will promote the charitable tax deduction for the trust fund and seek continued contributions. These activities may include convening a philanthropic roundtable, developing literature for use by the State Bar for dissemination, and whatever other activities are deemed necessary and appropriate to promote the trust fund.

CHAPTER 631

An act to repeal and add Section 1599.61 of the Health and Safety Code, relating to long-term health care facilities.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 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) Many admission agreements of nursing homes in California are unnecessarily long, complicated, and incomprehensible to consumers and their families and representatives.

(2) It is in the best interests of the residents of the nursing homes in California that admission agreements used by nursing homes in California meet the standards required under state and federal laws and that they do not violate the rights of nursing home residents.

(3) There is little uniformity among the over 1,400 nursing home admission agreements in California and the resultant task of reviewing admission agreements for compliance with state and federal laws poses an unnecessary administrative burden and expense.

(4) A uniform, nursing home admission agreement would provide consistency among admission agreements, promote and protect residents' rights, and conserve state resources and funds.

(b) It is the intent of the Legislature to mandate a standard admission agreement to be used for all admissions to skilled nursing facilities, intermediate care facilities, and nursing facilities in California.

SEC. 2. Section 1599.61 of the Health and Safety Code is repealed.

SEC. 3. Section 1599.61 is added to the Health and Safety Code, to read:

1599.61. (a) By January 1, 2000, all skilled nursing facilities, as defined in subdivision (c) of Section 1250, intermediate care

facilities, as defined in subdivision (d) of Section 1250, and nursing facilities, as defined in subdivision (k) of Section 1250, shall use a standard admission agreement developed and adopted by the department. This standard agreement shall comply with all applicable state and federal laws.

(b) (1) No facility shall alter the standard agreement unless so directed by the department.

(2) The department may develop an abbreviated admission agreement for patients whose length of stay is anticipated to be 14 days or less. This abbreviated agreement may be developed to coordinate with the standard admission agreement. If the patient's stay exceeds 14 days, the nursing facility shall obtain agreement to the remainder of the standard admission agreement.

(3) Nothing in this section shall prevent a skilled nursing facility, an intermediate care facility, or a nursing facility from distributing written explanations of facility-specific rules and procedures, provided that the written explanations are not included or incorporated in, or attached to the standard admission agreement, nor signed by the resident or his or her representative.

(c) Subdivisions (a) and (b) shall apply to all new admissions to skilled nursing facilities, intermediate care facilities, and nursing facilities that occur after December 31, 1999.

(d) By January 1, 2000, the department shall consolidate and develop one comprehensive Patients' Bill of Rights that includes the provisions contained in Chapter 3.9 (commencing with Section 1599), the regulatory resident rights for skilled nursing facilities under Section 72527 of Title 22 of the California Code of Regulations, the regulatory resident rights for intermediate care facilities under Section 73523 of Title 22 of the California Code of Regulations, and the rights afforded residents under Section 483.10 et seq. of Title 42 of the Code of Federal Regulations.

This comprehensive Patients' Bill of Rights shall be a mandatory attachment to all skilled nursing facility, intermediate care facility, and nursing facility contracts as specified in Section 1599.74 of this chapter.

(e) By January 1, 2000, the department shall ensure the translation of the Patients' Bill of Rights described in subdivision (d) into Spanish, Chinese, and other languages as needed to provide copies of the Patients' Bill of Rights to members of any ethnic group that represents at least 1 percent of the state's skilled nursing facility, intermediate care facility, and nursing facility population.

(f) Translated copies of the Patients' Bill of Rights shall be made available to all long-term health care facilities in the state, including skilled nursing facilities, intermediate care facilities, and nursing facilities. It shall be the responsibility of the long-term health care facilities to duplicate and distribute the translated versions of the Patients' Bill of Rights with admissions agreements, when appropriate.

(g) Nothing in this section is intended to change existing statutory or regulatory requirements governing the care provided to nursing facility residents. Similarly, nothing in this section is intended to create a new cause of action against a skilled nursing facility, an intermediate care facility, or a nursing facility as defined in Section 1250, related to its compliance with those existing statutory or regulatory requirements governing the care provided to nursing facility residents.

CHAPTER 632

An act to amend Sections 1368 and 1375 of, and to add Sections 1363.1 and 1375.1 to, the Civil Code, relating to common interest developments.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 1363.1 is added to the Civil Code, to read:

1363.1. (a) A prospective managing agent of a common interest development shall provide a written statement to the board of directors of the association of a common interest development as soon as practicable, but in no event more than 90 days, before entering into a management agreement which shall contain all of the following information concerning the managing agent:

(1) The names and business addresses of the owners or general partners of the managing agent. If the managing agent is a corporation, the written statement shall include the names and business addresses of the directors and officers and shareholders holding greater than 10 percent of the shares of the corporation.

(2) Whether or not any relevant licenses such as architectural design, construction, engineering, real estate, or accounting have been issued by this state and are currently held by the persons specified in paragraph (1). If a license is currently held by any of those persons, the statement shall contain the following information:

(A) What license is held.

(B) The dates the license is valid.

(C) The name of the licensee appearing on that license.

(3) Whether or not any relevant professional certifications or designations such as architectural design, construction, engineering, real property management, or accounting are currently held by any of the persons specified in paragraph (1), including, but not limited to, a professional common interest development manager. If any certification or designation is held, the statement shall include the following information:

(A) What the certification or designation is and what entity issued it.

(B) The dates the certification or designation is valid.

(C) The names in which the certification or designation is held.

(b) As used in this section, a "managing agent" is a person or entity who, for compensation or in expectation of compensation, exercises control over the assets of a common interest development. A "managing agent" does not include either of the following:

(1) A full-time employee of the association.

(2) Any regulated financial institution operating within the normal course of its regulated business practice.

SEC. 2. Section 1368 of the Civil Code is amended to read:

1368. (a) The owner of a separate interest, other than an owner subject to the requirements of Section 11018.6 of the Business and Professions Code, shall, as soon as practicable before transfer of title to the separate interest or execution of a real property sales contract therefor, as defined in Section 2985, provide the following to the prospective purchaser:

(1) A copy of the governing documents of the common interest development.

(2) If there is a restriction in the governing documents limiting the occupancy, residency, or use of a separate interest on the basis of age in a manner different from that provided in Section 51.3, a statement that the restriction is only enforceable to the extent permitted by Section 51.3 and a statement specifying the applicable provisions of Section 51.3.

(3) A copy of the most recent documents distributed pursuant to Section 1365.

(4) A true statement in writing from an authorized representative of the association as to the amount of the association's current regular and special assessments and fees, as well as any assessments levied upon the owner's interest in the common interest development which are unpaid on the date of the statement. The statement shall also include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the owner's interest in a common interest development pursuant to Section 1367.

(5) A copy of the preliminary list of defects provided to each member of the association pursuant to Section 1375, unless the association and the builder subsequently enter into a settlement agreement or otherwise resolve the matter and the association complies with Section 1375.1. Disclosure of the preliminary list of defects pursuant to this paragraph shall not waive any privilege attached to the document. The preliminary list of defects shall also include a statement that a final determination as to whether the list of defects is accurate and complete has not been made.

(6) A copy of the latest information provided for in Section 1375.1.

(7) Any change in the association's current regular and special assessments and fees which have been approved by the association's board of directors, but have not become due and payable as of the date disclosure is provided pursuant to this subdivision.

(b) Upon written request, an association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest with a copy of the requested items specified in paragraphs (1) to (7), inclusive, of subdivision (a). The association may charge a fee for this service, which shall not exceed the association's reasonable cost to prepare and reproduce the requested items.

(c) An association shall not impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except the association's actual costs to change its records and that authorized by subdivision (b).

(d) Any person or entity who willfully violates this section shall be liable to the purchaser of a separate interest which is subject to this section for actual damages occasioned thereby and, in addition, shall pay a civil penalty in an amount not to exceed five hundred dollars ($500). In an action to enforce this liability, the prevailing party shall be awarded reasonable attorneys' fees.

(e) Nothing in this section affects the validity of title to real property transferred in violation of this section.

(f) In addition to the requirements of this section, an owner transferring title to a separate interest shall comply with applicable requirements of Sections 1133 and 1134.

SEC. 3. Section 1375.1 is added to the Civil Code, to read:

1375.1. (a) As soon as is reasonably practicable after the association and the builder have entered into a settlement agreement or the matter has otherwise been resolved regarding alleged defects in the common areas, alleged defects in the separate interests that the association is obligated to maintain or repair, or alleged defects in the separate interests that arise out of, or are integrally related to, defects in the common areas or separate interests that the association is obligated to maintain or repair, where the defects giving rise to the dispute have not been corrected, the association shall, in writing, inform only the members of the association whose names appear on the records of the association that the matter has been resolved, by settlement agreement or other means, and disclose all of the following:

(1) A general description of the defects that the association reasonably believes, as of the date of the disclosure, will be corrected or replaced.

(2) A good faith estimate, as of the date of the disclosure, of when the association believes that the defects identified in paragraph (1) will be corrected or replaced. The association may state that the estimate may be modified.

(3) The status of the claims for defects in the design or construction of the common interest development that were not identified in paragraph (1) whether expressed in a preliminary list of defects sent to each member of the association or otherwise claimed and disclosed to the members of the association.

(b) Nothing in this section shall preclude an association from amending the disclosures required pursuant to subdivision (a), and any amendments shall supersede any prior conflicting information disclosed to the members of the association and shall retain any privilege attached to the original disclosures.

(c) Disclosure of the information required pursuant to subdivision (a) or authorized by subdivision (b) shall not waive any privilege attached to the information.

(d) For the purposes of the disclosures required pursuant to this section, the term "defects" shall be defined to include any damage resulting from defects.

SEC. 4. Section 1375 of the Civil Code is amended to read:

1375. (a) Before an association commences an action for damages against a builder of a common interest development based upon a claim for defects in the design or construction of the common interest development, all of the requirements of subdivisions (b) to (g), inclusive, shall be met, except as otherwise provided in this section.

(b) (1) The association shall give written notice to the builder against whom the claim is made. This notice shall include all of the following:

(A) A preliminary list of defects.

(B) A summary of the results of a survey or questionnaire distributed to homeowners to determine the nature and extent of defects, if this survey has been conducted or a questionnaire has been distributed.

(C) Either a summary of the results of testing conducted to determine the nature and extent of defects or the actual test results, if this testing has been conducted.

(2) The association's notice shall, upon delivery of the notice to the builder, commence a period of time not to exceed 90 days, unless the association and builder agree to a longer period, during which the association and builder shall either, in accordance with the requirements of this section, attempt to settle the dispute or attempt to agree to submit it to alternative dispute resolution.

(3) (A) Except as provided in this section and notwithstanding any other provision of law, the notice by the association shall, upon mailing, toll all statutory and contractual limitations on actions against all parties who may be responsible for the defects claimed, whether named in the notice or not, including claims for indemnity applicable to the claim, for a period of 150 days or a longer period agreed to in writing by the association and the builder.

(B) At any time, the builder may give written notice to cancel the tolling of the statute of limitations provided in this section. Upon delivery of this written cancellation notice, the association shall be relieved of any further obligation to satisfy the requirements of this subdivision and subdivisions (c) to (e), inclusive. The tolling of all applicable statutes of limitations shall cease 60 days after the written notice of cancellation by the builder is delivered to the association.

(c) (1) Within 25 days of the date the association delivers the notice required by subdivision (b), the builder may request in writing to meet and confer with the board of directors of the association, and to inspect the project and conduct testing, including testing that may cause physical damage to any property in the development, in order to evaluate the claim. If the builder does not make a timely request to meet and confer with the board of directors of the association, or to conduct inspection and testing, the association shall be relieved of any further obligation to satisfy the requirements of this subdivision and subdivisions (d) and (e). Unless the builder and association otherwise agree, the meeting shall take place no later than 10 days from the date of the builder's written request, at a mutually agreeable time and place. The meeting shall be subject to subdivision (g) of Section 1363. The discussions at the meeting are privileged communications and are not admissible in evidence in any civil action, unless the association and builder consent to their admission. The meeting shall be for the purpose of discussing all of the following:

(A) The nature and extent of the claimed defects.

(B) Proposed methods of correction, to the extent there is sufficient information.

(C) Proposals for submitting the dispute to alternative dispute resolution.

(D) Requests from the builder to inspect the project and conduct testing.

(2) If the builder requests in writing to meet and confer with the board of directors of the association pursuant to paragraph (1) of this subdivision, the builder shall deliver the notice provided by the association to the builder pursuant to subdivision (b) to any insurer that has issued a policy to the builder which imposes upon the insurer a duty to defend the insured or indemnify the insured for losses resulting from the defects identified in the notice required by subdivision (b). The notice by the builder shall, upon receipt, impose upon that insurer any obligation which would be imposed under the terms of the policy if the insured had been served with a summons and complaint for damages. The builder shall inform the association when the builder delivers the notice to each insurer pursuant to this paragraph.

(d) (1) If the association conducted inspection and testing prior to the date it sent the written notice pursuant to subdivision (b), the association shall, at the earliest practicable date after the meeting

held pursuant to subdivision (c), make available for inspection and testing at least those areas inspected or tested by the association. The inspection and testing shall be completed within 15 days from the date the association makes these areas available for inspection and testing, unless the association and builder agree to a longer period. If the builder does not timely complete the inspection and testing, the association shall be relieved of any further obligation to satisfy the requirements of this subdivision and subdivision (e). The manner in which the inspection and testing shall be conducted, and the extent of any inspection and testing to be conducted beyond that which was conducted by the association prior to sending the notice, shall be set by agreement of the association and builder.

(2) The builder shall pay all costs of inspection and testing that is requested by the builder, shall restore the property to the condition which existed immediately prior to the testing, and shall indemnify the association and owner of the separate interest for any damages resulting from the testing.

(3) Interior inspections of occupied separate interests and destructive testing of any interior of a separate interest shall be conducted in accordance with the governing documents of the association, unless otherwise agreed to by the owner of the separate interest. If the governing documents of the association do not provide for inspection or testing of separate interests, this inspection or testing shall be conducted in a manner and at a time agreed to by the owner of the separate interest.

(4) The results of the inspection and testing shall not be inadmissible in evidence in any civil action solely because the inspection and testing was conducted pursuant to this section.

(e) (1) Within 30 days of the completion of inspection and testing or within 30 days of a meeting held pursuant to subdivision (c) if no inspection and testing is conducted pursuant to subdivision (d), the builder shall submit to the association all of the following:

(A) A request to meet with the board to discuss a written settlement offer.

(B) A written settlement offer, and a concise explanation of the specific reasons for the terms of the offer. This offer may include an offer to submit the dispute to alternative dispute resolution.

(C) A statement that the builder has access to sufficient funds to satisfy the conditions of the settlement offer.

(D) A summary of the results of testing conducted for the purpose of determining the nature and extent of defects, if this testing has been conducted, unless the association provided the builder with actual test results pursuant to subdivision (b), in which case the builder shall provide the association with actual test results.

(2) If the builder does not timely submit the items required by this subdivision, the association shall be relieved of any further obligation to satisfy the requirements of this subdivision only.

(3) No less than 10 days after the builder submits the items required by this paragraph, the builder and the board of directors of the association shall meet and confer about the builder's settlement offer, including any offer to submit the dispute to alternative dispute resolution.

(f) (1) At any time after the notice required by subdivision (b) is delivered to the builder, the association and builder may agree in writing to modify or excuse any of the time periods or other obligations imposed by this section.

(2) Except for the notice required pursuant to subdivision (g), all notices, requests, statements, or other communications required pursuant to this section shall be delivered by one of the following:

(A) By first-class registered or certified mail, return receipt requested.

(B) In any manner in which it is permissible to serve a summons pursuant to Section 415.10 or 415.20 of the Code of Civil Procedure.

(g) If the board of directors of the association rejects a settlement offer presented at the meeting held pursuant to subdivision (e), the board shall comply with the requirements of paragraph (1) of this subdivision. If the association is relieved of its obligation to satisfy the requirements of subdivisions (a) to (e), inclusive, before all those requirements are satisfied, the association shall comply with the requirements of paragraph (2) of this subdivision. Under no circumstances shall the association be required to comply with both paragraph (1) and paragraph (2) of this subdivision.

(1) (A) If the association's board of directors rejects a settlement offer presented at the meeting held pursuant to subdivision (e), the board shall hold a meeting open to each member of the association. The meeting shall be held no less than 15 days before the association commences an action for damages against the builder.

(B) No less than 15 days before this meeting is held, a written notice shall be sent to each member of the association specifying all of the following:

(i) That a meeting will take place to discuss problems that may lead to the filing of a civil action, and the time and place of this meeting.

(ii) The options that are available to address the problems, including the filing of a civil action and a statement of the various alternatives that are reasonably foreseeable by the association to pay for those options and whether these payments are expected to be made from the use of reserve account funds or the imposition of regular or special assessments, or emergency assessment increases.

(iii) The complete text of any written settlement offer, and a concise explanation of the specific reasons for the terms of the offer submitted to the board pursuant to paragraph (1) of subdivision (e), received from the builder and of any offer by the builder to submit the dispute to alternative dispute resolution.

(iv) The preliminary list of defects provided by the association to the builder pursuant to subdivision (b) and a list of any other documents provided by the association to the builder pursuant to subdivision (b), and information about where and when members of the association may inspect those documents.

(C) The builder shall pay all expenses attributable to sending the settlement offer and any offer for alternative dispute resolution to all members of the association. The builder shall also pay the expense of holding the meeting, not to exceed three dollars ($3) per association member.

(D) The discussions at the meeting and the contents of the notice and the items required to be specified in the notice pursuant to subparagraph (B), are privileged communications and are not admissible in evidence in any civil action, unless the association consents to their admission.

(E) Compliance with this paragraph shall excuse the association from satisfying the requirements of Section 1368.4.

(2) If the association is relieved of its obligation to satisfy the requirements of subdivisions (a) to (e), inclusive, before all those requirements have been satisfied, the association may commence an action for damages against the builder 30 days after sending a written notice to each member specifying all of the following:

(A) The preliminary list of defects provided by the association to the builder pursuant to subdivision (b), and a list of any other documents provided by the association to the builder pursuant to subdivision (b), and information about where and when members of the association may inspect those documents.

(B) The options, including civil actions, that are available to address the problems.

(C) A statement that if 5 percent of the members of the association request a special meeting of the members to discuss the matter within 15 days of the date the notice is mailed or delivered to the members of the association, a meeting of the members shall be held, unless governing documents of the association provide for a different procedure for calling a special meeting of the members, in which case, the statement shall inform the members of that procedure.

(D) Compliance with this paragraph shall excuse the association from satisfying the requirements of Section 1368.4.

(h) (1) The only method of seeking judicial relief for the failure of the association to comply with this section shall be the assertion, as provided for in this subdivision, of a procedural deficiency to an action for damages by the association against the builder after such an action has been filed. A verified application asserting such a procedural deficiency shall be filed with the court no later than 90 days after the answer to the plaintiff's complaint has been served, unless the court finds that extraordinary conditions exist.

(2) Upon the verified application of the association or the builder alleging substantial noncompliance with this section, the court shall

schedule a hearing within 21 days of the application to determine whether the association or builder has substantially complied with this section. The issue may be determined upon affidavits or upon oral testimony, in the discretion of the court.

(3) (A) If the court finds that the association did not substantially comply with this section, the court shall stay the action for up to 90 days to allow the association to establish substantial compliance. The court shall set a hearing within 90 days to determine substantial compliance by the association. At any time, the court may, for good cause shown, extend the period of the stay upon application of the association.

(B) If, within the time set by the court pursuant to this section, the association has not established that it has substantially complied with this section, the court shall determine if, in the interest of justice, the action should be dismissed without prejudice, or if another remedy should be fashioned. Under no circumstances shall the court dismiss the action with prejudice as a result of the association's failure to substantially comply with this section. In determining the appropriate remedy, the court shall consider the extent to which the builder has complied with this section.

(C) If the alleged noncompliance of either the builder or the association resulted from the unreasonable withholding of consent for inspection or testing by an owner of a separate interest, it shall not be considered substantial noncompliance, provided that the party alleged to be out of compliance did not encourage the withholding of consent.

(4) If the court finds that the builder did not pay all of the costs of inspection and testing pursuant to paragraph (3) of subdivision (a), or that the builder did not pay its required share of the costs of holding the meeting and of all expenses attributable to sending the settlement offer pursuant to subparagraph (C) of paragraph (1) of subdivision (g) of this section, the court shall order the builder to pay any deficiencies within 30 days, with interest, and any additional remedy which the court determines, in the interest of justice, should be fashioned.

(i) As used in this section:

(1) "Association" shall have the same meaning as defined in subdivision (a) of Section 1351.

(2) "Builder" means the declarant, as defined in subdivision (g) of Section 1351.

(D) "Common interest development" shall have the same meaning as in subdivision (c) of Section 1351, except that it shall not include developments or projects with less than 20 units.

CHAPTER 633

An act to add and repeal Section 18941.8 of the Health and Safety Code, relating to building standards.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 18941.8 is added to the Health and Safety Code, to read:

18941.8. (a) The governing body of a local agency may adopt an ordinance that allows a building or other structure designated in subdivision (b) to comply with this part and Division 12 (commencing with Section 13000), or to any regulations or standards promulgated pursuant to this part, in a graduated manner over a period of no more than seven years.

(b) This section shall apply only to those buildings and other structures located on the former March Air Force Base, commonly known as:

(1) The Ben Clark Training Center, formerly known as the Non-Commissioned Officers' Training Academy, including all buildings and structures on the approximately 360 acres.

(2) The buildings comprising the medical facility.

(3) The March Joint Powers Authority, Economic Development Conveyance area comprising buildings 659, 660, 755, 760, 768, 940, 941, 942, 962, 976, 977, 1054, 1055, 2594, 2595, 2620, 2622, 2706, 2991, 2992, 2993, 2994, and 2995.

(c) The period for graduated compliance shall begin with the date the title to the property was transferred by the federal government to a local agency.

(d) The authority for a local agency to adopt an ordinance pursuant to this section is an alternative to the authority provided by Section 18941.7, and shall not be used consecutively with Section 18941.7.

(e) An ordinance adopted by a local agency pursuant to subdivision (a) shall not apply to a building or other structure that will be used as a permanent residence.

(f) Prior to the adoption of the ordinance pursuant to subdivision (a), each of the following conditions shall be met:

(1) The use of the building or other structure is not hazardous to life safety, fire safety, health, or sanitation, as determined by the application of state and local building and fire codes and standards by the local building official and fire marshal.

(2) The building or other structure has been transferred by the federal government to a local agency.

(3) The governing body of the local agency adopts a graduated compliance plan which includes all of the following:

(A) Requirements for buildings and structures with:

(i) No change in occupancy or use with no anticipated alterations.

(ii) No change in occupancy or use with planned alterations.

(iii) Change in occupancy or use with no anticipated alterations.

(iv) Change in occupancy or use with planned alterations.

(B) Requirements for a building and structure compliance inspection and a fire department inspection, and for preparation of inspection reports, prior to issuing a certificate of occupancy.

(C) Requirements for the inspection reports prepared pursuant to subparagraph (B) to be attached to the certificate of occupancy or provided to the occupants of the building or other structure.

(D) Requirements for the terms and period of time for compliance to be specified in the certificate of occupancy.

(E) Requirements that the alterations conform to the standards that were in effect at the time of the alteration.

(g) (1) Prior to the adoption of a graduated compliance plan, the local agency shall form a Compliance Plan Review Committee, hereafter referred to as the "committee," to comment on, and make recommendations to, the governing board of the local agency concerning the compliance plan.

(2) The committee shall be appointed by the governing board of the local agency and the membership of the committee shall contain at least one member from each of the following disciplines:

(A) Engineer, licensed by the State of California.

(B) Architect, licensed by the State of California.

(C) Building Inspector, certified by the International Conference of Building Officials or another similar recognized state, national, or international association.

(3) The committee may contain additional members at the discretion of the governing body of the local agency, whose unique background and knowledge may be of assistance to the committee.

(4) In no case shall the membership of the committee contain less than one member from the disciplines set forth in subparagraphs (A) to (C), inclusive, of paragraph (2).

(5) No member appointed to the committee shall be an employee of the local agency.

(6) The committee shall review the draft plan for its consistency with the requirements of this section, and report its written findings and recommendations to the governing board of the local agency. If the committee finds that the draft plan is not consistent with the requirements of this section, the committee shall recommend changes to the draft plan to achieve consistency.

(7) The local agency shall consider the findings and recommendations of the committee. If the committee finds that the draft plan is not consistent with the requirements of this section, the local agency shall take one of the following actions:

(A) Change the draft plan to be consistent with the requirements of this section, as recommended by the committee.

(B) Adopt the draft plan with some of the recommended changes or without changes, provided that the local agency makes written findings that explain the reasons why the local agency believes that the draft plan, as adopted, is consistent with the requirements of this section despite the findings and recommendations of the committee which were not adopted by the local agency.

(8) The local agency shall file a copy of the approved graduated compliance plan with the California Building Standards Commission.

(h) (1) Five years after the commencement of the period for graduated compliance specified in subdivision (b), the local agency shall arrange for the committee to determine whether the buildings or other structures adhere to the graduated compliance plan.

(2) The committee membership shall be governed by subparagraphs (2) to (5) inclusive, of subdivision (g).

(3) If the committee determines that the buildings or other structures do not adhere to the graduated compliance plan, the committee shall recommend to the governing board of the local agency that the local building official should initiate appropriate proceedings to withdraw the certificate of occupancy for that building or structure.

(i) Nothing in this section affects the requirements of state consent to retrocession pursuant to Section 113 of the Government Code.

(j) As used in this section, "local agency" means the County of Riverside, a city within the County of Riverside with jurisdiction over the March Air Force Base or the March Air Reserve Base, or the March Joint Powers Authority.

(k) This section shall be applicable to a building or other structure for which a local agency adopts a graduated compliance plan before January 1, 2000.

(*l*) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

(m) Nothing in this section shall affect local, state, or federal laws as they relate to access to the disabled.

SEC. 2. This act shall only become operative if AB 1071 of the 1997–98 Regular Session is enacted, and becomes operative on or before January 1, 1998.

SEC. 3. The Legislature finds and declares that a general statute, within the meaning of Section 16 of Article IV of the California Constitution, cannot be made applicable to the unique problems within the County of Riverside, as set forth in Section 1 of this act, and that, therefore this act is necessary.

CHAPTER 634

An act to add and repeal Section 13710.5 of the Business and Professions Code, relating to automotive products.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 13710.5 is added to the Business and Professions Code, to read:

13710.5. (a) The department may grant a variance from the chloride standard adopted pursuant to Section 13710 for recycled engine coolants or antifreeze, upon application by a producer of engine coolants or antifreeze or the manufacturer of an engine coolant or antifreeze recycling system, and upon a demonstration to the satisfaction of the department of compliance with all of the following conditions:

(1) The chloride content of the recycled engine coolant or antifreeze is less than 150 parts per million (150 ppm).

(2) The recycled engine coolant or antifreeze otherwise complies with standards adopted by the department pursuant to Section 13710 for engine coolants or antifreeze.

(3) The recycled engine coolant or antifreeze passes tests adopted by the department as standard in the industry for storage stability and compatibility, and electrochemical pitting.

(b) The department shall conduct random sampling, at a frequency to be determined by the department, to determine whether the recycled engine coolant or antifreeze subject to a variance granted pursuant to this section complies with the conditions of the variance.

(c) As used in this section, "engine coolant" or "antifreeze" includes prediluted engine coolant or antifreeze.

(d) This section shall remain in effect only until January 1, 2000, or until 150 days after the formal adoption by the American Society for Testing and Materials of standards for recycled engine coolants or antifreeze, whichever occurs first, and as of that date is repealed, unless a later enacted statute 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 635

An act to amend Section 100.3 of the Revenue and Taxation Code, relating to public finance.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 100.3 of the Revenue and Taxation Code is amended to read:

100.3. Notwithstanding any other provision of this chapter, in the County of Santa Cruz, the auditor shall, for the 1997–98 and future fiscal years, upon the written mutual agreement of the county and an enterprise district, deposit those property tax revenues that would otherwise be allocated to that enterprise special district in a Supplemental Allocation Fund. The county board of supervisors shall allocate moneys in the fund to either enterprise special districts or the county's parks and recreation special district listed as County Service Area Number 11 in the State Controller's Annual Report of Financial Transactions concerning Special Districts of California, Fiscal Year 1994–95. A written mutual agreement as described in this section may terminate upon a specified date, on or after which all revenues that would be otherwise subject to that agreement shall instead be allocated to the enterprise special district, unless the term of the agreement is extended, or a new written mutual agreement is entered into by the county and the enterprise special district, prior to that specified date.

CHAPTER 636

An act to amend Section 1236 of, and to add Section 1237 to, the Unemployment Insurance Code, relating to unemployment.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 1236 of the Unemployment Insurance Code is amended to read:

1236. Any civil employment tax matter dispute arising under Article 8 (commencing with Section 1126), Article 9 (commencing with Section 1176), or Article 11 (commencing with Section 1221), may be settled under the following conditions:

(a) (1) The director may approve a settlement of a civil employment tax matter in dispute involving a reduction of tax in settlement of seven thousand five hundred dollars ($7,500) or less. However, once an appeal of an employment tax matter dispute has been filed with the appeals board, the appeal has been assigned to an administrative law judge, and a notice of hearing has been issued, approval of the settlement by the assigned administrative law judge shall be obtained. If the decision of the administrative law judge has been appealed, approval of the appeals board shall be obtained. A proposed settlement shall be grounds for continuance of the scheduled hearing until the Attorney General has completed a review of the proposed settlement. "Civil employment tax matters in dispute" means those matters that are the subject of protests, appeals, or refund claims.

(2) Except as provided by paragraph (3), each proposed settlement shall be submitted to the Attorney General. Within 30 days of receiving that proposed settlement, the Attorney General shall review the recommendation and advise, in writing, of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. If the Attorney General determines that the settlement is reasonable from an overall perspective, the director, and the administrative law judge or the appeals board, as applicable, may then determine if a settlement will be approved.

(3) A settlement of any civil employment tax matter dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars ($5,000), may be approved by the director, and the administrative law judge or the appeals board, as applicable, without prior submission to the Attorney General.

(b) The director may recommend to the appeals board a settlement of a civil employment tax matter dispute involving a reduction in tax and exceeding seven thousand five hundred dollars ($7,500) and arising under Article 8 (commencing with Section 1126), Article 9 (commencing with Section 1176), or Article 11 (commencing with Section 1221). Each proposed settlement shall be submitted to the Attorney General in the same manner as described in subdivision (a).

(c) Whenever a reduction of tax or penalties or total tax and penalties in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file in the office of

the director a public record with respect to that settlement. The public record shall include, but need not be limited to, all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount involved.

(3) The amount payable or refundable pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the state.

(5) The Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(e) Any proceedings undertaken by the appeals board relating to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement entered into pursuant to this section shall constitute confidential tax information.

(f) Any settlement of a civil employment tax matter arising out of a disagreement between the department and the employing unit on the status of a worker as an employee or an independent contractor may also include an agreement on the prospective classification of that worker and any worker similarly situated for employment tax purposes, except as provided in subdivision (g).

(g) If a settlement includes a commitment on the prospective status of workers or reporting responsibilities of the employer, then the following shall apply:

(1) The settlement shall not operate to deprive workers of their eligibility for unemployment, workers' compensation, or disability insurance benefits.

(2) The commitment concerning the status of workers or reporting responsibilities of the employer will terminate if there is a change in material facts, a change in an applicable statute, or a ruling by the appeals board on the workers or employer subject to the settlement that is contrary to the commitment.

(h) For purposes of this section, settlement is defined as a compromise on the amount of the tax liability, consistent with the reasonable evaluation of the costs and risks associated with litigation of these matters.

(i) The amendments to this section made in the 1997 portion of the 1997–98 Regular Session shall become operative January 1, 1998.

SEC. 2. Section 1237 is added to the Unemployment Insurance Code, to read:

1237. (a) No business entity shall discharge or otherwise discriminate against any person because he or she has sought information from the department concerning his or her rights under this code or the Labor Code, cooperated with any investigation undertaken by the department, or has testified or is about to testify in any proceeding brought pursuant to this code or the Labor Code.

(b) Any employee who believes that his or her rights under subdivision (a) have been violated may file a complaint with the Labor Commissioner, and with respect to that complaint shall be entitled to the same rights, remedies, and procedures as are applicable for a violation of Section 98.6 of the Labor Code.

CHAPTER 637

An act to amend Section 48900 of, and to add Section 48900.8 to, the Education Code, relating to pupils.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 48900 of the Education Code is amended to read:

48900. A pupil may not be suspended from school or recommended for expulsion unless the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has committed an act as defined pursuant to one or more of subdivisions (a) to (o), inclusive:

(a) (1) Caused, attempted to cause, or threatened to cause physical injury to another person; or

(2) Willfully used force or violence upon the person of another, except in self-defense.

(b) Possessed, sold, or otherwise furnished any firearm, knife, explosive, or other dangerous object, unless, in the case of possession of any object of this type, the pupil had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or the designee of the principal.

(c) Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind.

(d) Unlawfully offered, arranged, or negotiated to sell any controlled substance listed in Chapter 2 (commencing with Section

11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and then either sold, delivered, or otherwise furnished to any person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant.

(e) Committed or attempted to commit robbery or extortion.

(f) Caused or attempted to cause damage to school property or private property.

(g) Stolen or attempted to steal school property or private property.

(h) Possessed or used tobacco, or any products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this section does not prohibit use or possession by a pupil of his or her own prescription products.

(i) Committed an obscene act or engaged in habitual profanity or vulgarity.

(j) Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code.

(k) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.

(*l*) Knowingly received stolen school property or private property.

(m) Possessed an imitation firearm. As used in this section, "imitation firearm" means a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm.

(n) Committed or attempted to commit a sexual assault as defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal Code or committed a sexual battery as defined in Section 243.4 of the Penal Code.

(o) Harassed, threatened, or intimidated a pupil who is a complaining witness or witness in a school disciplinary proceeding for the purpose of either preventing that pupil from being a witness or retaliating against that pupil for being a witness, or both.

(p) A pupil may not be suspended or expelled for any of the acts enumerated unless that act is related to school activity or school attendance occurring within a school under the jurisdiction of the superintendent or principal or occurring within any other school district. A pupil may be suspended or expelled for acts that are enumerated in this section and related to school activity or attendance that occur at any time, including, but not limited to, any of the following:

(1) While on school grounds.

(2) While going to or coming from school.

(3) During the lunch period whether on or off the campus.

(4) During, or while going to or coming from, a school sponsored activity.

(q) It is the intent of the Legislature that alternatives to suspensions or expulsion be imposed against any pupil who is truant, tardy, or otherwise absent from school activities.

SEC. 2. Section 48900.8 is added to the Education Code, to read:

48900.8. For purposes of notification to parents, and for the reporting of expulsion or suspension offenses to the State Department of Education, each school district shall specifically identify, by offense committed, in all appropriate official records of a pupil each suspension or expulsion of that pupil for the commission of any of the offenses set forth in subdivisions (a) to (o), inclusive, of Section 48900, in Section 48900.2, in Section 48900.3, in Section 48900.4, or in paragraphs (1) to (5), inclusive, of subdivision (a) of, or paragraphs (1) to (4), inclusive, of subdivision (c) of, Section 48915.

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 638

An act to amend Section 87207 of, and to add Article 4.6 (commencing with Section 87460) to Chapter 7 of Title 9 of, the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 87207 of the Government Code is amended to read:

87207. (a) When income is required to be reported under this article, the statement shall contain, except as provided in subdivision (b):

(1) The name and address of each source of income aggregating two hundred fifty dollars ($250) or more in value, or fifty dollars ($50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source.

(2) A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was at least two hundred fifty dollars ($250) but did not exceed one thousand dollars ($1,000), whether it was in excess of one thousand dollars ($1,000) but was not greater than ten thousand dollars ($10,000), or whether it was greater than ten thousand dollars ($10,000).

(3) A description of the consideration, if any, for which the income was received.

(4) In the case of a gift, the amount and the date on which the gift was received.

(5) In the case of a loan, the annual interest rate, the security, if any, given for the loan, and the term of the loan.

(b) When the filer's pro rata share of income to a business entity, including income to a sole proprietorship, is required to be reported under this article, the statement shall contain:

(1) The name, address, and a general description of the business activity of the business entity.

(2) The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from that person was equal to or greater than ten thousand dollars ($10,000) during a calendar year.

(c) When a payment, including an advance or reimbursement, for travel is required to be reported pursuant to this section, it may be reported on a separate travel reimbursement schedule which shall be included in the filer's statement of economic interest. A filer who chooses not to use the travel schedule shall disclose payments for travel as a gift, unless it is clear from all surrounding circumstances that the services provided were equal to or greater in value than the payments for the travel, in which case the travel may be reported as income.

SEC. 2. Article 4.6 (commencing with Section 87460) is added to Chapter 7 of Title 9 of the Government Code, to read:

Article 4.6. Loans to Public Officials

87460. (a) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the elected officer holds office or over which the elected officer's agency has direction and control.

(b) No public official who is required to file a statement of economic interests pursuant to Section 87200 and no public official

who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the public official holds office or over which the public official's agency has direction and control. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(c) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status.

(d) No public official who is required to file a statement of economic interests pursuant to Section 87200 and no public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(e) This section shall not apply to the following:

(1) Loans made to the campaign committee of an elected officer or candidate for elective office.

(2) Loans made by a public official'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 persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

(3) Loans from a person which, in the aggregate, do not exceed two hundred fifty dollars ($250) at any given time.

(4) Loans made, or offered in writing, before the operative date of this section.

87461. (a) Except as set forth in subdivision (b), no elected officer of a state or local government agency shall, from the date of his or her election to office through the date he or she vacates office, receive a personal loan of five hundred dollars ($500) or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.

(b) This section shall not apply to the following types of loans:

(1) Loans made to the campaign committee of the elected officer.

(2) Loans made to the elected officer by his or her 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 the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

(3) Loans made, or offered in writing, before the operative date of this section.

(c) Nothing in this section shall exempt any person from any other provisions of this title.

87462. (a) Except as set forth in subdivision (b), a personal loan shall become a gift to the debtor for the purposes of this title in the following circumstances:

(1) If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.

(2) If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:

(A) The date the loan was made.

(B) The date the last payment of one hundred dollars ($100) or more was made on the loan.

(C) The date upon which the debtor has made payments on the loan aggregating to less than two hundred fifty dollars ($250) during the previous 12 months.

(b) This section shall not apply to the following types of loans:

(1) A loan made to the campaign committee of an elected officer or a candidate for elective office.

(2) A loan that would otherwise not be a gift as defined in this title.

(3) A loan that would otherwise be a gift as set forth under paragraph (a), but on which the creditor has taken reasonable action to collect the balance due.

(4) A loan that would otherwise be a gift as set forth under paragraph (a), but on which the creditor, based on reasonable business considerations, has not undertaken collection action. Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.

(5) A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

(c) Nothing in this section shall exempt any person from any other provisions of this title.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

SEC. 4. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 639

An act to amend Section 101305 of the Health and Safety Code, and to add Section 14105.11 to the Welfare and Institutions Code, relating to human services.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 101305 of the Health and Safety Code is amended to read:

101305. Any counties that were eligible for organization and operation of local public health services by the department pursuant to former Section 1157, as amended by Section 130 of Chapter 429 of the Statutes of 1978, as of January 1, 1988, shall continue to be eligible, notwithstanding an increase in total population beyond the 40,000 population limit of that section.

This section shall remain in effect until January 1, 1999, and on that date is repealed, unless a later enacted statute, that becomes effective on or before January 1, 1999, deletes or extends that date.

SEC. 2. Section 14105.11 is added to the Welfare and Institutions Code, to read:

14105.11. (a) The department may negotiate settlements with acute care hospitals with psychiatric units that unintentionally

violate Medi-Cal cost reimbursement policies or procedures governing the operation of acute psychiatric hospitals and that had, prior to the violations, been changed by the department.

(b) In any case to which this section applies, the department may waive all or part of the overpayments made under this chapter that would otherwise be reimbursable to the department by an acute care hospital.

(c) This section shall only apply to hospitals in counties of the 20th and 42nd classes.

CHAPTER 640

An act to add Section 51223.1 to the Education Code, relating to education.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 51223.1 is added to the Education Code, to read:

51223.1. (a) (1) The Legislature finds and declares all of the following:

(A) The Education Code currently mandates 200 minutes of physical education every 10 days for pupils in elementary school. Recent studies have shown that the vast majority of children and youth are not physically fit.

(B) According to a March 1997 report by the Centers for Disease Control, the percentage of children and adolescents who are overweight has more than doubled in the last 30 years. Most of this increase occurred in the last 10 years.

(C) Nearly 40 percent of children of ages five to eight years have health conditions that significantly increase their risk of early heart disease.

(D) Some 70 percent of girls, and 40 percent of boys, who are from 6 to 12 years of age do not have enough muscle strength to do more than one pullup.

(E) Most children lead inactive lives. On the average, first through fourth graders spend two hours watching television on schooldays and spend close to three and one-half hours watching television on weekend days.

(2) It is, therefore, the intent of the Legislature that all children shall have access to a high-quality, comprehensive, and developmentally appropriate physical education program on a regular basis.

(b) (1) Each school district selected by the Superintendent of Public Instruction pursuant to paragraph (2) shall report to the Superintendent of Public Instruction in the Coordinated Compliance Review as to the extent of its compliance with subdivision (a) of Section 51222 and Section 51223 during that school year.

(2) The Superintendent of Public Instruction shall select not less than 10 percent of the school districts of the state to report compliance with the provisions set forth in paragraph (1). The school districts selected shall provide a random and accurate sampling of the state as a whole.

(c) For purposes of determining compliance with these provisions, the Superintendent of Public Instruction shall not count the time spent in recesses and the lunch period.

(d) A school district that fails to comply with the existing statutory requirements shall issue a corrective plan to the State Department of Education within one year of receiving a noncompliance notification from the department.

(e) This section shall not be applicable to high schools.

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 641

An act to amend Sections 36012 and 36101 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 36012 of the Vehicle Code is amended to read:

36012. A "cotton module mover" is a motortruck, semitrailer, or a truck tractor, in combination with a semitrailer, that is equipped with a self-loading bed and is designed and used exclusively to transport field manufactured cotton modules to a cotton gin.

SEC. 2. Section 36101 of the Vehicle Code is amended to read:

36101. The following farm vehicles are exempt from registration, if they have and display an identification plate as specified in Section 5014, and the vehicles shall not be deemed to be implements of husbandry and they shall be subject to all equipment and device requirements as if registered:

(a) A motor vehicle of a size so as to require a permit under Section 35780 owned and operated by a farmer, designed and used exclusively for carrying, or returning empty from carrying, feed and seed products of farming, and used on a highway between one part of a farm to another part of that farm or from one farm to another farm.

(b) A vehicle equipped with a water tank owned by a farmer and used exclusively to service his or her own implements of husbandry.

(c) A water tank truck, which is owned by a farmer, not operated for compensation, and used extensively in the conduct of agricultural operations, when used exclusively (1) for sprinkling water on dirt roads providing access to agricultural fields or (2) transportation of water for irrigation of crops or trees.

(d) (1) A cotton module mover, as defined in Section 36012.

(2) In order to maintain the exemption from registration granted under this subdivision for a truck tractor, when combined with a semitrailer, the owner of that truck tractor shall not operate it during the exemption period in any manner other than as a cotton module mover, as defined in Section 36012, and shall do all of the following:

(A) Register the vehicle with the department before operating it as a commercial motor vehicle.

(B) Apply to the department on a yearly basis for any renewal of the exemption from registration.

(3) Exemption from registration under this subdivision does not exempt a truck tractor, when combined with a semitrailer, operating as a cotton module mover pursuant to Section 36012 and this subdivision from the applicable safety requirements of this code or any regulation adopted pursuant to any statute, including, but not limited to, equipment standards, driver licensing requirements, maximum driving and on-duty hours provisions, log book requirements, drug and alcohol testing, maintenance of vehicles, and any driver or vehicle standards specified in Division 14.8 (commencing with Section 34500).

(4) Truck tractors exempt from registration under this subdivision are subject to the fees imposed under Sections 9250.1, 9250.8, and 9250.13, and to any other vehicle fees that are imposed by statute on or after January 1, 1998, that are deposited in the Motor Vehicle Account.

(e) A trailer which is equipped with a plenum chamber for the drying of agricultural commodities.

(f) Except as provided in subdivision (j) of Section 36005, a trap wagon, as defined in Section 36016, which is equipped with a fuel tank

or tanks. The fuel tank or tanks shall not exceed 3,000 gallons total capacity.

(g) A forklift truck, operated by a farmer not for compensation. For purposes of this section, a hay-squeeze shall be deemed a forklift.

(h) A truck tractor or truck tractor and semitrailer combination specified in this subdivision which is owned by a farmer and operated on the highways only incidental to a farming operation and not for compensation. This subdivision applies only to truck tractors with a manufacturer's gross vehicle weight rating over 10,000 pounds that are equipped with all-wheel drive and off-highway traction tires on all wheels, and only to semitrailers used in combination with that truck tractor and exclusively in the production or harvesting of melons. The vehicles specified in this subdivision shall not be operated in excess of 25 miles per hour on the highways.

The Commissioner of the California Highway Patrol may, by regulation, prohibit the vehicles specified in this subdivision from operating on specific routes. These vehicles shall not be operated laden on the highway for more than two miles from the point of origin and shall not be operated for more than 30 miles unladen on the highway from the point of origin. These vehicles shall not be operated for more than 15 miles unladen on the highway from the point of origin, unless accompanied by an escort vehicle to the front, and an escort vehicle to the rear.

(i) A motor vehicle specifically designed for, and used exclusively in, an agricultural operation for purposes of carrying, or returning empty from carrying, silage and is operated by a farmer, an employee of the farmer, or a contracted employee of the farmer between one part of a farm to another part of that farm or from one farm to another farm, on a highway for a distance not to exceed 20 miles from the point of origin of the trip. This subdivision does not include a vehicle that is used for the transportation of silage for retail sales.

For the purposes of this subdivision, "silage" includes field corn, sorghum, grass, legumes, cereals, or cereal mixes, either green or mature, converted into feed for livestock.

CHAPTER 642

An act to amend Sections 4801, 4802, 4804, 4806, 4826, 4831, 4846, 4848, 4850, 4852, 4853, 4856, 4883, and 4905 of, and to amend, repeal, and add Sections 4832, 4833, 4834, 4835, and 4842.2 of, the Business and Professions Code, relating to veterinary medicine, and making an appropriation therefor.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 4801 of the Business and Professions Code is amended to read:

4801. Each member, except the public members, shall be a graduate of some veterinary college authorized by law to confer degrees, a bona fide resident of this state for a period of at least five years immediately preceding his or her appointment, a veterinarian licensed by the state, and shall have been actually engaged in the practice of his or her profession in this state during this period. The public members shall have been residents of this state for a period of at least five years last past before their appointment and shall not be licentiates of the board or of any other board under this division or of any board referred to in Sections 1000 and 3600.

No person shall serve as a member of the board for more than two consecutive terms.

SEC. 2. Section 4802 of the Business and Professions Code is amended to read:

4802. The members of the board shall hold office for a term of four years. Each member shall serve 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 he or she was appointed, whichever first occurs. A member may be reappointed subject to the limitation contained in Section 4801.

Vacancies occurring shall be filled by appointment for the unexpired term, within 90 days after they occur.

The Governor shall appoint the four members qualified as provided in Section 4801. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member.

SEC. 3. Section 4804 of the Business and Professions Code is amended to read:

4804. The board shall elect a president, vice president, and any other officers of the board as shall be necessary, from its membership. The Attorney General shall act as counsel for the board and the members thereof in their official or individual capacity for any act done under the color of official right.

SEC. 4. Section 4806 of the Business and Professions Code is amended to read:

4806. Each member of the board shall receive a per diem and expenses as provided in Section 103.

SEC. 5. Section 4826 of the Business and Professions Code is amended to read:

4826. Any person practices veterinary medicine, surgery, and dentistry, and the various branches thereof, when he or she does any one of the following:

(a) Represents himself or herself as engaged in the practice of veterinary medicine, veterinary surgery, or veterinary dentistry in any of its branches.

(b) Diagnoses or prescribes a drug, medicine, appliance, application, or treatment of whatever nature for the prevention, cure or relief of a wound, fracture, bodily injury, or disease of animals.

(c) Administers a drug, medicine, appliance, application, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of animals, except where the drug, medicine, appliance, application, or treatment is administered by a registered veterinary technician or an unregistered assistant at the direction of and under the direct supervision of a licensed veterinarian subject to Article 2.5 (commencing with Section 4832). However, no person, other than a licensed veterinarian, may induce anesthesia unless authorized by regulation of the board.

(d) Performs a surgical or dental operation upon an animal.

(e) Performs any manual procedure for the diagnosis of pregnancy, sterility, or infertility upon livestock or Equidae.

(f) Uses any words, letters or titles in such connection or under such circumstances as to induce the belief that the person using them is engaged in the practice of veterinary medicine, veterinary surgery, or veterinary dentistry. This use shall be prima facie evidence of the intention to represent himself or herself as engaged in the practice of veterinary medicine, veterinary surgery, or veterinary dentistry.

SEC. 6. Section 4831 of the Business and Professions Code is amended to read:

4831. Any person, who violates or aids or abets in violating any of the provisions of this chapter, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than five hundred dollars ($500), nor more than two thousand dollars ($2,000), or by imprisonment in a county jail for not less than 30 days nor more than one year, or by both the fine and imprisonment.

SEC. 7. Section 4832 of the Business and Professions Code is amended to read:

4832. (a) There is hereby created within the jurisdiction of the board, a Registered Veterinary Technician Examining Committee, hereinafter referred to as the examining committee.

(b) The examining committee shall consist of eight members. The examining committee shall consist of three veterinarians licensed to practice veterinary medicine in the State of California, two public members and three members who shall be registered as veterinary technicians in the State of California. Appointments may be made from lists, if any, submitted by appropriate professional associations and societies.

The Governor shall appoint the six licensed and registered members qualified as provided in this subdivision. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.

The Governor shall appoint the additional animal health technician member, provided for by the statute enacted during the

1984 portion of the 1984–85 Regular Session, upon the expiration of the term of the public member appointed by the Governor.

(c) All doctors of veterinary medicine who are appointed members of the examining committee, shall have been licensed to practice veterinary medicine at least five years preceding their appointment. All veterinary technicians who are appointed members of the examining committee shall have been registered as an animal health or veterinary technician at least five years preceding their appointment.

(d) The members of the examining committee shall serve for a term of four years, except that the original examining committee appointments may be staggered to achieve rotational terms. No person may serve as a member of the committee for more than two consecutive terms.

(e) This section shall remain in effect only until July 1, 1998, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 1998, deletes or extends that date.

SEC. 8. Section 4832 is added to the Business and Professions Code, to read:

4832. (a) The board shall establish an advisory committee on issues pertaining to the practice of veterinary technicians, that shall be known as the Registered Veterinary Technician Committee, hereafter referred to as the committee.

(b) This section shall become operative on July 1, 1998.

SEC. 9. Section 4833 of the Business and Professions Code is amended to read:

4833. (a) The examining committee shall assist the board in the examination of applicants for veterinary technician registration. The examination shall be held at least once a year at the times and places designated by the board.

(b) As directed by the board, the examining committee may investigate and evaluate each applicant applying for registration as a registered veterinary technician and may recommend to the board for final determination the admission of the applicant to the examination and eligibility for registration.

(c) The examining committee shall make recommendations to the board regarding the establishment and operation of the continuing education requirements authorized by Section 4838 of this article.

(d) The examining committee shall assist the board in the inspection and approval of all schools or institutions offering a curriculum for training registered veterinary technicians.

(e) This section shall remain in effect only until July 1, 1998, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 1998, deletes or extends that date.

SEC. 10. Section 4833 is added to the Business and Professions Code, to read:

4833. (a) The committee may assist the board in the examination of applicants for veterinary technician registration. The examination shall be held at least once a year at the times and places designated by the board.

(b) As directed by the board, the committee may investigate and evaluate each applicant applying for registration as a registered veterinary technician and may recommend to the board for final determination the admission of the applicant to the examination and eligibility for registration.

(c) The committee may make recommendations to the board regarding the establishment and operation of the continuing education requirements authorized by Section 4838 of this article.

(d) The committee may assist the board in the inspection and approval of all schools or institutions offering a curriculum for training registered veterinary technicians.

(e) This section shall become operative on July 1, 1998.

SEC. 11. Section 4834 of the Business and Professions Code is amended to read:

4834. (a) The board has the power to remove from office at any time any member of the examining committee for continued neglect of any duty required by this article, for incompetency, or for unprofessional conduct.

(b) This section shall remain in effect only until July 1, 1998, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 1998, deletes or extends that date.

SEC. 12. Section 4834 is added to the Business and Professions Code, to read:

4834. (a) The board has the power to remove from office at any time any member of the committee for continued neglect of any duty required by this article, for incompetency, or for unprofessional conduct.

(b) This section shall become operative on July 1, 1998.

SEC. 13. Section 4835 of the Business and Professions Code is amended to read:

4835. (a) Each member of the examining committee shall receive a per diem and expenses, as provided in Section 103.

(b) This section shall remain in effect only until July 1, 1998, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 1998, deletes or extends that date.

SEC. 14. Section 4835 is added to the Business and Professions Code, to read:

4835. (a) Each member of the committee shall receive a per diem and expenses, as provided in Section 103.

(b) This section shall become operative on July 1, 1998.

SEC. 15. Section 4842.2 of the Business and Professions Code is amended to read:

4842.2. (a) The board shall certify to the State Controller at the beginning of each month for the month preceding, the amount and

source of all revenue received by it pursuant to this chapter, and shall pay the entire amount thereof to the State Treasurer for deposit in the Registered Veterinary Technician Examining Committee Fund, which fund is hereby created and is continuously appropriated to carry out the purposes of this chapter.

(b) This section shall remain in effect only until July 1, 1998, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 1998, deletes or extends that date.

SEC. 16. Section 4842.2 is added to the Business and Professions Code, to read:

4842.2. (a) Commencing July 1, 1998, all funds collected by the board under this article shall be deposited in the Veterinary Medical Board Contingent Fund.

(b) All unappropriated funds existing in the Registered Veterinary Technician Examining Committee Fund on July 1, 1998, shall be transferred to the Veterinary Medical Board Contingent Fund.

(c) This section shall become operative July 1, 1998.

Section 4846 of the Business and Professions Code is amended to read:

4846. Applications for a license shall be upon a form furnished by the board and, in addition, shall be accompanied by a diploma or other verification of graduation from a veterinary college recognized by the board.

SEC. 18. Section 4848 of the Business and Professions Code is amended to read:

4848. (a) (1) The board shall, by means of examination, ascertain the professional qualifications of all applicants for licenses to practice veterinary medicine in this state and shall issue a license to every person whom it finds to be qualified. No license shall be issued to anyone who has not demonstrated his or her competency by examination.

(2) The examination shall consist of both of the following:

(A) A licensing examination consisting of both of the following:

(i) An examination in basic veterinary science.

(ii) An examination of clinical competency.

(B) A California state board examination.

The examinations may be given at the same time or at different times as determined by the board. For examination purposes, the board may make contractual arrangements on a sole source basis with organizations furnishing examination material as it may deem desirable and shall be exempt from Section 10115 of the Public Contract Code.

(3) The licensing examination may be waived by the board in any case in which it determines that the applicant has taken and passed an examination for licensure in another state substantially equivalent in scope and subject matter to the licensing examination last given in California before the determination is made, and has achieved a

score on the out-of-state examination at least equal to the score required to pass the licensing examination administered in California.

(4) Nothing in this chapter shall preclude the board from permitting a person who has completed a portion of his or her educational program, as determined by the board, in a veterinary college, recognized by the board under Section 4846, to take any examination or any part thereof prior to satisfying the requirements for application for a license established by Section 4846.

(b) The board may waive the examination requirements of subdivision (a), and issue a license to an applicant to practice veterinary medicine, if the applicant meets all of the following requirements and would not be denied issuance of a license by any other provision of this code:

(1) The applicant is licensed in one or more other states in which the board has determined that he or she has taken and passed a licensing examination, and a written practical or written practice examination, equivalent in scope and subject matter to the California state board examination.

(2) The applicant has been lawfully and continuously engaged in the practice of veterinary medicine for four years or more in one or more states immediately preceding filing his or her application for licensure in this state.

(3) The applicant has graduated from a veterinary college recognized by the board under Section 4846. In the case of an applicant who is not a graduate of a veterinary college recognized by the board, he or she shall possess a certificate issued by the Educational Commission for Foreign Veterinary Graduates.

(4) The board determines that no disciplinary action has been taken against the applicant by any public agency concerned with the practice of veterinary medicine and that the applicant has not been the subject of adverse judgments resulting from the practice of veterinary medicine which the board determines constitutes evidence of a pattern of incompetence or negligence.

(5) The applicant passes a practicing veterinarian examination administered by the board or a committee or organization authorized by the board. It may be oral or practical or clinical in nature and full consideration shall be given to the duration and character of the applicant's practice.

SEC. 19. Section 4850 of the Business and Professions Code is amended to read:

4850. Every person holding a license under this chapter shall conspicuously display a copy of the license in his or her principal place of business.

SEC. 20. Section 4852 of the Business and Professions Code is amended to read:

4852. Every person holding a license issued under this chapter who changes his or her mailing address shall notify the board of his

or her new mailing address within 30 days of the change. The board shall not renew the license of any person who fails to comply with this section unless the person pays the penalty fee prescribed in Section 4905. An applicant for the renewal of a license shall specify in his or her application whether he or she has changed his or her mailing address and the board may accept that statement as evidence of the fact.

SEC. 21. Section 4853 of the Business and Professions Code is amended to read:

4853. (a) All premises where veterinary medicine, veterinary dentistry, veterinary surgery, and the various branches thereof is being practiced shall be registered with the board. The certificate of registration shall be on a form prescribed in accordance with Section 164.

(b) "Premises" for the purpose of this chapter shall include a building, kennel, mobile unit, or vehicle. Mobile units and vehicles shall be exempted from independent registration with the board when they are operated from a building or facility which is the licensee manager's principal place of business and the building is registered with the board, and the registration identifies and declares the use of the mobile unit or vehicle.

(c) Every application for registration of veterinary premises shall set forth in the application the name of the responsible licensee manager who is to act for and on behalf of the licensed premises. Substitution of the responsible licensee manager may be accomplished by application to the board if the following conditions are met:

(1) The person substituted qualifies by presenting satisfactory evidence that he or she possesses a valid, unexpired, and unrevoked license as provided by this chapter and that the license is not currently under suspension.

(2) No circumvention of the law is contemplated by the substitution.

SEC. 22. Section 4856 of the Business and Professions Code is amended to read:

4856. (a) All records required by law to be kept by a veterinarian subject to this chapter, including, but not limited to, records pertaining to diagnosis and treatment of animals and records pertaining to drugs or devices for use on animals, shall be open to inspection by the board, or its authorized representatives, during an inspection as part of a regular inspection program by the board, or during an investigation initiated in response to a complaint that a licensee has violated any law or regulation that constitutes grounds for disciplinary action by the board. A copy of all those records shall be provided to the board immediately upon request.

(b) Equipment and drugs on the premises, or any other place, where veterinary medicine, veterinary dentistry, veterinary surgery, or the various branches thereof is being practiced, or otherwise in the

possession of a veterinarian for purposes of that practice, shall be open to inspection by the board, or its authorized representatives, during an inspection as part of a regular inspection program by the board, or during an investigation initiated in response to a complaint that a licensee has violated any law or regulation that constitutes grounds for disciplinary action by the board.

SEC. 23. Section 4883 of the Business and Professions Code is amended to read:

4883. The board may deny, revoke, or suspend a license or assess a fine as provided in Section 4875 for any of the following:

(a) Conviction of a crime substantially related to the qualifications, functions, or duties of veterinary medicine, surgery, or dentistry, in which case the record of the conviction shall be conclusive evidence.

(b) For having professional connection with, or lending one's name to, any illegal practitioner of veterinary medicine and the various branches thereof.

(c) Violation or attempting to violate, directly or indirectly, any of the provisions of this chapter.

(d) Fraud or dishonesty in applying, treating or reporting on tuberculin or other biological tests.

(e) Employment of anyone but a veterinarian licensed in the state to demonstrate the use of biologics in the treatment of animals.

(f) False or misleading advertising.

(g) Unprofessional conduct, that includes, but is not limited to, the following:

(1) Conviction of a charge of violating any federal statutes or rules or any statute or rule of this state, regulating dangerous drugs or controlled substances. The record of the conviction is conclusive evidence thereof. 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. The board may order the license suspended or revoked, or assess a fine, or decline to issue a license, 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.

(2) (A) The use of or prescribing for or administering to himself or herself, any controlled substance.

(B) The use of any of the dangerous drugs specified in Section 4211, or of alcoholic beverages to the extent, or in any manner as to be dangerous or injurious to a person licensed 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 so licensed to conduct with safety the practice authorized by the license.

(C) The conviction of more than one misdemeanor or any felony involving the use, consumption or self-administration of any of the substances referred to in this section or any combination thereof and the record of the conviction is conclusive evidence.

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. The board may order the license suspended or revoked or assess a fine, or may decline to issue a license, 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 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.

(3) A violation of any federal statute, rule, or regulation or any of the statutes, rules, or regulations of this state regulating dangerous drugs or controlled substances.

(h) Failure to keep one's premises and all equipment therein in a clean and sanitary condition.

(i) Fraud, deception, negligence, or incompetence in the practice of veterinary medicine.

(j) Aiding or abetting in any acts that are in violation of any of the provisions of this chapter.

(k) The employment of fraud, misrepresentation, or deception in obtaining the license.

(*l*) The revocation, suspension, or other discipline by another state or territory of a license or certificate to practice veterinary medicine in that state or territory.

(m) Cruelty to animals, conviction on a charge of cruelty to animals, or both.

(n) Disciplinary action taken by any public agency in any state or territory for any act substantially related to the practice of veterinary medicine.

(o) Violation, or the assisting or abetting violation, of any regulations adopted by the board pursuant to this chapter.

SEC. 24. Section 4905 of the Business and Professions Code is amended to read:

4905. The following fees shall be collected by the board and shall be credited to the Veterinary Medical Board Contingent Fund:

(a) The fee for filing an application for examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, but not to exceed one hundred dollars ($100).

(b) The fee for the licensing examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed three hundred twenty-five dollars ($325).

(c) The fee for the California state board examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed one hundred fifty dollars ($150).

(d) The initial license fee shall be set by the board at not more than two hundred fifty dollars ($250) except that, if the license is issued less than one year before the date on which it will expire, then the fee shall be set by the board at not more than one hundred twenty-five dollars ($125). The board may, by appropriate regulation, provide for the waiver or refund of the initial license fee where the license is issued less than 45 days before the date on which it will expire.

(e) The renewal fee shall be set by the board for each biennial renewal period in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, but not to exceed two hundred fifty dollars ($250).

(f) The delinquency fee shall not exceed twenty-five dollars ($25).

(g) The fee for issuance of a duplicate license is ten dollars ($10).

(h) The board may make a charge for records, transcripts, and other official documents pertaining to the affairs of the board.

(i) The fee for failure to report a change in the mailing address is fifteen dollars ($15).

(j) The initial and annual renewal fees for registration of veterinary premises shall be set by the board in an amount not to exceed one hundred dollars ($100) annually.

(k) If the money transferred from the Veterinary Medical Board Contingent Fund to the General Fund pursuant to the Budget Act of 1991 is redeposited into the Veterinary Medical Board Contingent Fund, the fees assessed by the board shall be reduced correspondingly. However, the reduction shall not be so great as to cause the Veterinary Medical Board Contingent Fund to have a reserve of less than three months of annual authorized board expenditures. The fees set by the board shall not result in a Veterinary Medical Board Contingent Fund reserve of more than 10 months of annual authorized board expenditures.

CHAPTER 643

An act to amend Section 6250 of, and to add Section 6250.5 to, the Penal Code, relating to corrections.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 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 Department of Corrections currently has jurisdiction over more than 145,000 inmates in custody.

(b) Approximately 70 percent of state prison inmates had a substance abuse problem immediately before their arrest and conviction.

(c) More than 65 percent of state parolees will reoffend, causing their paroles to be revoked, which will cost the state more money in reincarceration costs.

(d) State prison facilities are severely overcrowded and unable to offer meaningful therapeutic drug treatment programs to the vast majority of inmates who are scheduled for parole.

(e) The therapeutic drug program at the Richard J. Donovan Correctional Facility in San Diego has proven to be very successful. Results from that facility indicate that only 16 percent of inmates who successfully completed that drug program reoffended and were returned to custody within two years.

(f) It would substantially benefit the Department of Corrections and society to break the cycle of recidivism by offering a therapeutic drug treatment program to more inmates, in facilities that are solely designed and staffed to address the issues of addiction and focused on returning inmates to society as functioning, employable people.

(g) The department currently spends twenty-one thousand dollars ($21,000) per inmate per year and has a budget of $3.8 billion.

(h) It would substantially benefit the taxpayers of this state to provide a privately owned and operated therapeutic drug treatment facility for more inmates at a cost that is less than the average cost of incarceration.

(i) It is, therefore, the intent of the Legislature that the Department of Corrections contract for 3,000 beds for a therapeutic drug treatment program, 2,000 of which would be dedicated for men and 1,000 for women who are about to reenter society. It is also the intent of the Legislature that the department ensure that training and programming at the facilities where the beds are located are focused on preparing the inmates for return to society with employable skills, and an understanding of how to be a good employee, a functioning family member, and a successful parolee.

SEC. 2. Section 6250 of the Penal Code is amended to read:

6250. (a) The Director of Corrections may establish and operate facilities to be known as community correctional centers. The director may enter into a long-term agreement, not to exceed 20 years, for transfer of prisoners to, or placement of prisoners in, community correctional centers.

(b) No later than 30 days after the department has designated a site as a potential site, the director shall notify the county board of

supervisors or city council in whose jurisdiction the center may be located. The notification shall set forth the specifics of the site location, design, and operational characteristics for the facility. The department shall not contract for the facility until it has received and reviewed the comments of every local agency notified under this section or the expiration of 60 days after having given notice to the local agency, whichever occurs first.

Upon receipt of the notice, the city, county, or city and county may hold a public hearing concerning the impact of the facility on the community. At the conclusion of the public hearing, the city, county, or city and county may make a recommendation to the department as to the appropriateness of the proposed site, specific design and operational features to help make the facility more compatible with the community, and alternative locations, if appropriate.

Upon receipt of comments and recommendations, the department shall determine whether to proceed with the facility, to modify the proposal, or to select an alternative site. If the department selects a site recommended by the local agency after a hearing conducted pursuant to this section, no further review or hearings are required by this subdivision.

(c) The notice referred to in subdivision (b) may be delivered by hand or sent by any form of mail requiring a return receipt. Failure to provide the notice shall be grounds for extinguishing the contract upon motion of the board of supervisors or city council.

(d) The Director of Corrections shall not change the use of or significantly increase the capacity of a community correctional center established pursuant to subdivision (a) unless the director has first notified the county board of supervisors or city council in whose jurisdiction the center is located at least 30 days prior to the change of use or capacity. Failure to provide the notice shall be grounds for enjoining the change in use or capacity.

SEC. 3. Section 6250.5 is added to the Penal Code, to read:

6250.5. (a) The Director of Corrections may contract for the establishment and operation of community correctional facilities that offer programs for the treatment of addiction to alcohol or controlled substances based on the therapeutic community model, only if the cost per inmate of operating the facilities will be less than the cost per inmate of operating similar state facilities. The Legislature finds and declares that the purpose of a therapeutic community program, which emphasizes alcohol and controlled substance rehabilitation, is to substantially increase the likelihood of successful parole for those inmates.

(b) Each facility under contract pursuant to this section shall provide programs that prepare each inmate for successful reintegration into society. Those programs shall involve constant counseling in drug and alcohol abuse, employment skills, victim awareness, and family responsibility, and generally shall prepare each inmate for return to society. The programs also shall emphasize

literacy training and use computer-supported training so that inmates may improve their reading and writing skills. The program shall include postincarceration counseling and care in order to ensure a greater opportunity for success.

(c) The department may enter into a long-term agreement, not to exceed 20 years, for transfer of prisoners to, or placement of prisoners in, facilities under contract pursuant to this section.

(d) The department shall provide for the review of any agreement entered into under this section to determine if the contractor is in compliance with the terms of this section. The review shall be conducted at least every five years. The department may revoke any agreement if the contractor is not in compliance with this section.

(e) Notwithstanding the Public Contract Code or Article 10 (commencing with Section 1200) of Title 15 of the California Code of Regulations, the Department of Corrections shall select an independent contractor to conduct an annual audit and cost comparison evaluation of any programs established under this section. Any contract for annual audits and evaluation shall provide that the annual report, whether in final or draft form, and all working papers and data, shall be available for immediate review upon request by the department.

CHAPTER 644

An act to amend Section 2106 of the Streets and Highways Code, relating to highways, and making an appropriation therefor.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) In its recent publication, "The National Bicycling and Walking Study," the United States Department of Transportation established as a goal the doubling of the total number of trips made by bicycling and walking, thus requiring a commitment by state and local governments to match the federal effort.

(b) Bicycling is a very productive physical activity because it accomplishes both travel and exercise simultaneously.

(c) One percent of all trips in the state are made on bicycles, yet the level of state funding for bicycle projects is far lower than the demand would indicate and has never equaled that demand.

(d) The current annual appropriation to the Bicycle Lane Account of three hundred sixty thousand dollars ($360,000) is a very

small fraction of the state's five billion nine hundred million dollar ($5,900,000,000) transportation budget.

(e) The annual appropriation to the Bicycle Lane Account has not increased in 25 years, despite significant inflation and increased demand for bicycle facilities.

(f) Adequate funding for bicycle facilities, including bicycle lanes, off-street trails, showers, and good quality parking areas would encourage higher levels of ridership and enable safer ridership.

(g) Bicycle projects and programs are very inexpensive when compared to other transportation projects and programs. Yet, beneficial impacts can be achieved statewide for a relatively small investment in bicycle projects and programs.

SEC. 2. Section 2106 of the Streets and Highways Code is amended to read:

2106. A sum equal to the net revenue derived from one and four one-hundredths cent ($0.0104) per gallon tax under the Motor Vehicle Fuel License Tax Law (Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code) shall be apportioned monthly from the Highway Users Tax Account in the Transportation Tax Fund among the counties and cities as provided in this section.

The amounts available under this section shall be apportioned, as follows:

(a) Four hundred dollars ($400) per month shall be apportioned to each city and city and county and eight hundred dollars ($800) per month shall be apportioned to each county and city and county.

(b) The following amounts shall be transferred to the Bicycle Lane Account in the State Transportation Fund during the following calendar years:

(1) During 1998, one million dollars ($1,000,000).

(2) During 1999, one million dollars ($1,000,000).

(3) During 2000, one million dollars ($1,000,000).

(4) During 2001, two million dollars ($2,000,000).

(5) During 2002, two million dollars ($2,000,000).

(6) During 2003, three million dollars ($3,000,000).

(7) During 2004, and annually thereafter, five million dollars ($5,000,000).

(c) The balance shall be apportioned, as follows:

(1) A base sum shall be computed for each county by using the same proportions of fee-paid and exempt vehicles as are established for purposes of apportionment of funds under subdivision (d) of Section 2104.

(2) For each county, the percentage of the total assessed valuation of tangible property subject to local tax levies within the county which is represented by the assessed valuation of tangible property outside the incorporated cities of the county shall be applied to its base sum, and the resulting amount shall be apportioned to the county. The assessed valuation of taxable tangible property, for

purposes of this computation, shall be that most recently used for countywide tax levies as reported to the Controller by the State Board of Equalization. If an incorporation or annexation is legally completed following the base sum computation, the new city's assessed valuation shall be deducted from the county's assessed valuation, the estimate of which may be provided by the State Board of Equalization.

(3) The difference between the base sum for each county and the amount apportioned to the county shall be apportioned to the cities of that county in the proportion that the population of each city bears to the total population of all the cities in the county. Populations used for determining apportionment of money under Section 2107 are to be used for purposes of this section.

CHAPTER 645

An act to amend Sections 17913, 17920, 17920.9, 17921, 17922.8, 17924, 17927, 17952, 17958, 17958.1, 17958.5, 17958.7, 18928, and 18941.7 of, and to add and repeal Section 18941.9 of, the Health and Safety Code, relating to building standards.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 17913 of the Health and Safety Code is amended to read:

17913. (a) The department shall notify the entities listed in subdivision (c) of the dates that each of the uniform codes published by the specific organizations described in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 17922 are approved by the California Building Standards Commission pursuant to Section 18930 and the effective date of the model codes as established by the California Building Standards Commission.

(b) The department may publish information bulletins regarding code enforcement as emergencies occur or at any other time the department determines appropriate.

(c) The department shall distribute the information described in subdivision (a), and may distribute the information described in subdivision (b), to the following entities:

(1) The building department in each county and city.

(2) Housing code officials, fire service officials, professional associations concerned with building standards, and any other persons or entities the department determines appropriate.

SEC. 2. Section 17920 of the Health and Safety Code is amended to read:

17920. As used in this part:

(a) "Approved" means acceptable to the department.

(b) "Building" means a structure subject to this part.

(c) "Building standard" means building standard as defined in Section 18909.

(d) "Department" means the Department of Housing and Community Development.

(e) "Enforcement" means diligent effort to secure compliance, including review of plans and permit applications, response to complaints, citation of violations, and other legal process. Except as otherwise provided in this part, "enforcement" may, but need not, include inspections of existing buildings on which no complaint or permit application has been filed, and effort to secure compliance as to these existing buildings.

(f) "Fire protection district" means any special district, or any other municipal or public corporation or district, which is authorized by law to provide fire protection and prevention services.

(g) "Labeled" means equipment or materials to which has been attached a label, symbol, or other identifying mark of an organization, approved by the department, that maintains a periodic inspection program of production of labeled products, installations, equipment, or materials and by whose labeling the manufacturer indicates compliance with appropriate standards or performance in a specified manner.

(h) "Listed" means all products that appear in a list published by an approved testing or listing agency.

(i) "Listing agency" means an agency approved by the department that is in the business of listing and labeling products, materials, equipment, and installations tested by an approved testing agency, and that maintains a periodic inspection program on current production of listed products, equipment, and installations, and that, at least annually, makes available a published report of these listings.

(j) "Noise insulation" means the protection of persons within buildings from excessive noise, however generated, originating within or without such buildings.

(k) "Nuisance" means any nuisance defined pursuant to Part 3 (commencing with Section 3479) of Division 4 of the Civil Code, or any other form of nuisance recognized at common law or in equity.

(*l*) "Public entity" has the same meaning as defined in Section 811.2 of the Government Code.

(m) "Testing agency" means an agency approved by the department as qualified and equipped for testing of products, materials, equipment, and installations in accordance with nationally recognized standards.

SEC. 3. Section 17920.9 of the Health and Safety Code is amended to read:

17920.9. (a) The department shall propose adoption, amendment, or repeal by the California Building Standards

Commission pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5, of those regulations as are necessary for the provision of minimum fire safety and fire-resistant standards relating to the manufacture, composition, and use of foam building systems manufactured for use, or used, in construction of buildings subject to this part, mobilehomes subject to Part 2 (commencing with Section 18000), or factory-built housing subject to Part 6 (commencing with Section 19960), for the protection of the health and safety of persons occupying those buildings, mobilehomes, or factory-built housing. The department shall enforce building standards published in the California Building Standards Code relating to foam building systems, and other rules and regulations adopted by the department or by federal law. Each manufacturer of foam building systems shall have any foam building system manufactured for use in any building, factory-built housing, or mobilehome listed and labeled by an approved testing agency certifying that the system meets fire safety and fire-resistant building standards published in the California Building Standards Code. The department shall consult with all available public and private sources to assist in the development of the building standards and other rules and regulations.

(b) The department shall make inspections of the manufacture of such foam building systems which it determines are necessary to insure compliance with the requirements of subdivision (a).

(c) No person shall sell, offer for sale, or use in construction of buildings subject to this part, mobilehomes subject to Part 2 (commencing with Section 18000), or factory-built housing subject to Part 6 (commencing with Section 19960), in this state, any foam building system, and no person shall sell or offer for sale in this state any such building, mobilehome, or factory-built housing of which a foam building system is a component, which foam building system does not comply with, or has not been listed and labeled by an approved testing agency certifying that the foam building system is in compliance with, the requirements of subdivision (a) on and after the 180th day after the building standards or other rules or regulations become effective.

This subdivision shall not apply to any buildings, mobilehomes, or factory-built housing constructed prior to the 180th day after those standards become effective.

(d) No person shall sell, offer for sale, or use in construction of any building subject to this part, a mobilehome subject to Part 2 (commencing with Section 18000), or factory-built housing subject to Part 6 (commencing with Section 19960), in this state, any foam building system, and no person shall sell or offer for sale in this state any such building, mobilehome, or factory-built housing of which a foam building system is a component, if the manufacturer thereof refuses to permit the department to conduct the inspections required by subdivision (b) on and after the 180th day after the building standards or other rules or regulations become effective.

(e) As used in this section:

(1) "Foam" means a material made by mixing organic polymers with air or other gases in a manner that forms a solid substance with holes filled with air or gas when the mixture is allowed to set.

(2) "Foam building system" means a system of building materials composed of, in whole or in part, of foam. It includes, but is not limited to, all combinations of systems such as those composed of foam inserted between and bonded to two boundary surface materials or those composed exclusively of foam.

(3) "Building standard" means building standard as defined in Section 18909.

SEC. 4. Section 17921 of the Health and Safety Code is amended to read:

17921. (a) Except as provided in subdivision (b), the department shall propose the adoption, amendment, or repeal of building standards to the California Building Standards Commission pursuant to the provisions of Chapter 4 (commencing with Section 18935) of Part 2.5, and the department shall adopt, amend, and repeal other rules and regulations for the protection of the public health, safety, and general welfare of the occupant and the public governing the erection, construction, enlargement, conversion, alteration, repair, moving, removal, demolition, occupancy, use, height, court, area, sanitation, ventilation and maintenance of all hotels, motels, lodging houses, apartment houses, and dwellings, and buildings and structures accessory thereto. Except as otherwise provided in this part, the department shall enforce those building standards and those other rules and regulations. The other rules and regulations adopted by the department may include a schedule of fees to pay the cost of enforcement by the department under Sections 17952 and 17965.

(b) The State Fire Marshal shall adopt, amend, or repeal and submit building standards for approval pursuant to the provisions of Chapter 4 (commencing with Section 18935) of Part 2.5, and the State Fire Marshal shall adopt, amend, and repeal other rules and regulations for fire and panic safety in all hotels, motels, lodging houses, apartment houses and dwellings, buildings, and structures accessory thereto. These building standards and regulations shall be enforced pursuant to Sections 13145 and 13146; however, this section is not intended to require an inspection by a local fire agency of each single-family dwelling prior to its occupancy.

SEC. 5. Section 17922.8 of the Health and Safety Code is amended to read:

17922.8. The Office of Noise Control may appoint an advisory committee to assist the office in reviewing and revising the noise insulation standards previously adopted.

SEC. 6. Section 17924 of the Health and Safety Code is amended to read:

17924. Rules and regulations shall be promulgated pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division

3 of Title 2 of the Government Code, and no state department, officer, board, agency, committee, or commission shall have power pursuant to the provisions of this part to publish building standards, as defined in Section 18909, but shall propose and submit those building standards as deemed necessary to carry out the provisions of this part for adoption and publishing pursuant to the provisions of Part 2.5 (commencing with Section 18901).

SEC. 7. Section 17927 of the Health and Safety Code is amended to read:

17927. The department shall propose the adoption, amendment, or repeal of building standards pursuant to the provisions of Chapter 4 (commencing with Section 18935) of Part 2.5, and the department shall adopt, amend, and repeal other rules and regulations for garage door springs for installation in garages which are accessory to apartment houses, hotels, motels, and dwellings as the department determines are reasonably necessary to prevent the death or injury of persons or damage to property resulting from the breaking of the garage door springs. Except as otherwise provided in this part, the department shall enforce building standards published in the California Building Standards Code relating to garage door springs and other rules and regulations adopted by the department pursuant to this section.

No garage door spring which violates the provisions of any building standard published in the California Building Standards Code relating to garage door springs or any other rule or regulation adopted by the department pursuant to this section shall be sold or offered for sale, or installed in any garage which is accessory to an apartment house, hotel, motel, or dwelling, on or after the date of publication of the building standard or the effective date of the rule or regulation.

SEC. 8. Section 17952 of the Health and Safety Code is amended to read:

17952. (a) In the event of nonenforcement of this part, or the building standards published in the California Building Standards Code, or the other rules and regulations promulgated pursuant to the provisions of this part, such provisions, building standards or other rules and regulations shall be enforced by the department in any city or county after the department has given written notice to the governing body of that city or county or fire protection district, as the case may be, of a violation of this part, those building standards, or the other rules or regulations promulgated pursuant to the provisions of this part and the city or county has failed to initiate proceedings to secure correction of the violation within 30 days of the date of that notice. The city or county or fire protection district may request a hearing before the department pursuant to Section 17930 within the 30 days to show cause for nonenforcement. Enforcement by the department shall not be initiated until the decision of the

department, adverse to the city or county or fire protection district, is rendered.

(b) In the event of enforcement by the department pursuant to subdivision (a), the costs incurred by the department for such enforcement shall be borne by such city, or county, or city and county, or fire protection district. The department may assess fees to defray the costs of enforcement, thereby reducing the cost to be borne by the city, county, city and county, or fire protection district, but the department need not assess such fees and may not require the city, county, city and county, or fire protection district to assess fees to offset department costs.

SEC. 9. Section 17958 of the Health and Safety Code is amended to read:

17958. Except as provided in Sections 17958.8 and 17958.9, any city or county may make changes in the provisions adopted pursuant to Section 17922 and published in the California Building Standards Code or the other regulations thereafter adopted pursuant to Section 17922 to amend, add, or repeal ordinances or regulations which impose the same requirements as are contained in the provisions adopted pursuant to Section 17922 and published in the California Building Standards Code or the other regulations adopted pursuant to Section 17922 or make changes or modifications in those requirements upon express findings pursuant to Sections 17958.5 and 17958.7. If any city or county does not amend, add, or repeal ordinances or regulations to impose those requirements or make changes or modifications in those requirements upon express findings, the provisions published in the California Building Standards Code or the other regulations promulgated pursuant to Section 17922 shall be applicable to it and shall become effective 180 days after publication by the California Building Standards Commission. Amendments, additions, and deletions to the California Building Standards Code adopted by a city or county pursuant to Section 17958.7, together with all applicable portions of the California Building Standards Code, shall become effective 180 days after publication of the California Building Standards Code by the California Building Standards Commission.

SEC. 10. Section 17958.1 of the Health and Safety Code is amended to read:

17958.1. Notwithstanding Sections 17922, 17958, and 17958.5, a city or county may, by ordinance, permit efficiency units for occupancy by no more than two persons which have a minimum floor area of 150 square feet and which may also have partial kitchen or bathroom facilities, as specified by the ordinance. In all other respects, these efficiency units shall conform to minimum standards for those occupancies otherwise made applicable pursuant to this part.

"Efficiency unit," as used in this section, has the same meaning specified in the Uniform Building Code of the International

Conference of Building Officials, as incorporated by reference in Chapter 2-12 of Part 2 of Title 24 of the California Code of Regulations.

SEC. 11. Section 17958.5 of the Health and Safety Code is amended to read:

17958.5. Except as provided in Section 17922.6, in adopting the ordinances or regulations pursuant to Section 17958, a city or county may make such changes or modifications in the requirements contained in the provisions published in the California Building Standards Code and the other regulations adopted pursuant to Section 17922 as it determines, pursuant to the provisions of Section 17958.7, are reasonably necessary because of local climatic, geological, or topographical conditions.

For purposes of this subdivision, a city and county may make reasonably necessary modifications to the requirements, adopted pursuant to Section 17922, contained in the provisions of the code and regulations on the basis of local conditions.

SEC. 12. Section 17958.7 of the Health and Safety Code is amended to read:

17958.7. (a) Except as provided in Section 17922.6, the governing body of a city or county, before making any modifications or changes pursuant to Section 17958.5, shall make an express finding that such modifications or changes are reasonably necessary because of local climatic, geological or topographical conditions. Such a finding shall be available as a public record. A copy of those findings, together with the modification or change expressly marked and identified to which each finding refers, shall be filed with the California Building Standards Commission. No modification or change shall become effective or operative for any purpose until the finding and the modification or change have been filed with the California Building Standards Commission.

(b) The California Building Standards Commission may reject a modification or change filed by the governing body of a city or county if no finding was submitted.

SEC. 13. Section 18928 of the Health and Safety Code is amended to read:

18928. (a) Each state agency adopting or proposing adoption of a model code, national standard, or specification shall reference the most recent edition of applicable model codes, national standards, or specifications.

(b) Each state agency adopting or proposing adoption of a model code, national standard, or specification shall adopt or propose adoption of the most recent editions of the model codes, as amended or proposed to be amended by the adopting agency, within one year after the date of publication of the model codes, national standards, or specifications. The "date of publication of a model code, national standard, or specification" is either of the following:

(1) The date of publication printed in the model code, national standard, or specification. If only a month and year are shown by the model code, national standard, or specification adopting agency or body, the date of publication shall be considered to be the last day of the month shown.

(2) The date determined by the commission, if no publication date is shown in the model code, national standard, or specification. The commission shall notify all adopting agencies of its determination within 15 days.

(c) If the adopting agencies fail to comply with subdivision (b), the commission shall convene a committee to recommend to the commission the adoption, amendment, or repeal, on the agencies' behalf, of the most recent editions of the model codes, national standards, or specifications and necessary state standards.

SEC. 14. Section 18941.7 of the Health and Safety Code is amended to read:

18941.7. (a) The governing body of a city, county, city and county, or a joint powers agency which has been authorized to adopt and administer building and fire safety codes and standards may adopt an ordinance that allows a building or other structure located on a military base selected for closure by action of the federal Defense Base Closure and Realignment Commission to comply with this part and Division 12 (commencing with Section 13000), or any regulations or standards promulgated pursuant to this part, in a graduated manner over a period of no more than three years from the earlier of either the date the property has been transferred by, or the date a lease is entered into with, the federal government pursuant to paragraph (2), if all of the following conditions are met:

(1) The use of the building or structure is not hazardous to life safety, fire safety, health, or sanitation, as determined by the local building official and fire marshal.

(2) The building or other structure has been transferred by the federal government to the city, county, city and county, redevelopment agency, joint powers agency, or reuse entity or is under a lease between the city, county, city and county, redevelopment agency, joint powers agency, or reuse entity and the federal government.

(3) The governing body of the city, county, city and county, or a joint powers agency which has been authorized to adopt and administer building and fire safety codes and standards adopts a graduated compliance plan which includes all of the following:

(A) Requirements for buildings and structures with:

(i) No change in occupancy or use with no anticipated alterations.

(ii) No change in occupancy or use with planned alterations.

(iii) Change in occupancy or use with no anticipated alterations.

(iv) Change in occupancy or use with planned alterations.

(B) Requirements for a building and structure compliance inspection and a fire department inspection, and for preparation of inspection reports, prior to issuing a certificate of occupancy.

(C) Requirements for the inspection reports prepared pursuant to subparagraph (B) to be attached to the certificate of occupancy or provided to the occupants of the building or other structure.

(D) Requirements for the terms and period of time for compliance to be specified in the sublease.

(b) Nothing in this section affects the requirement of state consent to retrocession pursuant to Section 113 of the Government Code.

(c) This section shall be applicable to a building or other structure for which the conditions in paragraphs (1), (2), and (3) of subdivision (a) are met before January 1, 2000.

(d) 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. 15. Section 18941.9 is added to the Health and Safety Code, to read:

18941.9. (a) The governing body of a local agency may adopt an ordinance that allows a building or other structure located on a former military base to comply with this part and Division 12 (commencing with Section 13000), or to any regulations or standards promulgated pursuant to this part, in a graduated manner over a period of no more than seven years.

(b) This section shall apply only to those buildings and other structures located on the following military bases or on specified portions of former military bases that were selected for closure or realigned by action of the federal Defense Base Closure and Realignment Commission:

(1) At the former Castle Air Force Base, Building 1015 and Building 1075.

(2) At the former Hamilton Air Force Base, approximately 38 acres, commonly known as Planning Areas 6, 8, 9, and 10.

(3) The former Hunter's Point Naval Shipyard.

(4) The former Treasure Island Naval Station.

(5) The former San Diego Naval Training Center.

(6) At the Marine Corps Air Station-Tustin, approximately 100 acres, commonly known as Planning Areas 1, 2, 3, 6, 8, 9, 10, 16, and 17.

(7) At the Marine Corps Air Services-El Toro, Buildings 295, 296, 297, 313, 317, 318, 319, 360, 371, and 722.

(8) At the former Castle Air Force Base, Buildings 54, 175, 765, 871, 1015, 1200, 1212, 1213, 1319, 1320, 1322, 1324, 1332, 1333, 1335, 1340, 1509, 1535, 1540, and 1545.

(9) At the Oakland Army Base, Buildings 641, 645, 646, 655, 660, 701, 726, 738, 740, 780, 790, 792, 794, 796, 802, 803, 804, 805, 806, 807, 808, 821, 822, and 823.

(10) At the former Naval Air Station Alameda, Buildings 2, 3, 4, 5, 8, 16, 17, 18, and 94.

(11) At Point Molate Naval Fuel Depot, Buildings 1, 6, 17, 63, 76, 85, 87, 123, and 132.

(c) The period for graduated compliance shall begin with the earlier of either the date the title to the property was transferred by, or the date a lease is entered into with, the federal government to the local agency.

(d) The authority for a local agency to adopt an ordinance pursuant to this section is an alternative to the authority provided by Section 18941.7, and shall not be used consecutively with Section 18941.7.

(e) An ordinance adopted by a local agency pursuant to subdivision (a) shall not apply to a building or other structure that will be used as a residence.

(f) Prior to the adoption of the ordinance pursuant to subdivision (a), each of the following conditions shall be met:

(1) The use of the building or other structure is not hazardous to life safety, fire safety, health, or sanitation, as determined by the application of state and local building and fire codes and standards by the local building official and fire marshal.

(2) The building or other structure has been transferred by the federal government to the local agency or is under a lease between the local agency and the federal government.

(3) The governing body of the local agency adopts a graduated compliance plan which includes all of the following:

(A) Requirements for buildings and structures with:

(i) No change in occupancy or use with no anticipated alterations.

(ii) No change in occupancy or use with planned alterations.

(iii) Change in occupancy or use with no anticipated alterations.

(iv) Change in occupancy or use with planned alterations.

(B) Requirements for a building and structure compliance inspection and a fire department inspection, and for preparation of inspection reports, prior to issuing a certificate of occupancy.

(C) Requirements for the inspection reports prepared pursuant to subparagraph (B) to be attached to the certificate of occupancy or provided to the occupants of the building or other structure.

(D) Requirements for the terms and period of time for compliance to be specified in the certificate of occupancy.

(E) Requirements that the alterations conform to the standards that were in effect at the time of the alteration.

(g) (1) Before adopting the graduated compliance plan, the local agency shall arrange for the review of the draft plan by an engineer, architect, or building inspector. The engineer or architect shall be licensed by the State of California, and the building inspector shall be certified by the International Conference of Building Officials or another similar recognized state, national, or international

association. The engineer, architect, or building inspector shall not be an employee of the local agency.

(2) The engineer, architect, or building inspector shall review the draft plan for its consistency with the requirements of this section, and report his or her written findings and recommendations to the local agency. If the engineer, architect, or building inspector finds that the draft plan is not consistent with the requirements of this section, the engineer, architect, or building inspector shall recommend changes to the draft plan to achieve consistency.

(3) The local agency shall consider the findings and recommendations of the engineer, architect, or building inspector. If the engineer, architect, or building inspector finds that the draft plan is not consistent with the requirements of this section, the local agency shall take one of the following actions:

(A) Change the draft plan to be consistent with the requirements of this section, as recommended by the engineer, architect, or building inspector.

(B) Adopt the draft plan with some of the recommended changes or without changes, provided that the local agency makes written findings that explain the reasons why the local agency believes that the draft plan, as adopted, is consistent with the requirements of this section despite the findings and recommendations of the engineer, architect, or building inspector which were not adopted by the local agency.

(4) The local agency shall file a copy of the approved graduated compliance plan with the California Building Standards Commission.

(h) (1) Five years after the beginning of the period for graduated compliance specified in subdivision (b), the local agency shall arrange for an engineer, architect, or building inspector to determine whether the buildings or other structures adhere to the graduated compliance plan. The engineer or architect shall be licensed by the State of California and the building inspector shall be certified by the International Conference of Building Officials or another similar recognized state, national, or international association. The engineer, architect, or building inspector shall not be an employee of the local agency.

(2) If the engineer, architect, or building inspector determines that the building or other structure does not adhere to the graduated compliance plan, the local building official shall initiate appropriate proceedings to withdraw the certificate of occupancy for that building or structure.

(i) Nothing in this section affects the requirement of state consent to retrocession pursuant to Section 113 of the Government Code.

(j) As used in this section, ''local agency'' means a city, county, or city and county. When authorized by state law or local ordinance to adopt and administer building and fire safety codes and standards, a community redevelopment agency, a reuse entity, or a joint powers agency may also be a ''local agency'' for the purposes of this section.

(k) This section shall be applicable to a building or other structure for which a local agency adopts a graduated compliance plan before January 1, 2000.

(*l*) Any taxpayer, property owner, resident, or public agency has standing to enforce the provisions of this section.

(m) Nothing in this section shall affect local, state, or federal laws as they relate to access to the disabled.

(n) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 16. The Legislature finds and declares that a general statute, within the meaning of Section 16 of Article IV of the California Constitution, cannot be made applicable to the unique problems found at the former military bases affected by Section 15 of this act, and that, therefore, this act is necessary.

SEC. 17. This act shall only become operative if AB 125 of the 1997–98 Regular Session is enacted, and becomes operative, on or before January 1, 1998.

CHAPTER 646

An act to add Section 13081 to the Financial Code, relating to financial transactions.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 13081 is added to the Financial Code, to read:

13081. (a) In enacting this section, the Legislature finds and declares all of the following:

(1) It is in the best interest of consumers in this state to be aware of fees they may be charged for using point-of-sale devices prior to being obligated to pay those fees.

(2) In 1996, the Legislature enacted Assembly Bill 3366 (Chapter 98 of the Statutes of 1996), which required operators of automatic teller machines (ATMs) to electronically disclose fees for transactions at those ATMs. That legislation did not require disclosure of fees at point-of-sale devices.

(3) In order to maximize consumer awareness of fees at point-of-sale devices, and to create equity between operators of ATMs and operators of point-of-sale devices, it is the intent of the Legislature in enacting this section to require the maximum feasible disclosure of fees at point-of-sale devices.

(b) No operator of a point-of-sale device in this state shall impose any fee upon a customer for the use of that device unless that fee is disclosed to the customer prior to the customer's being obligated to pay for any goods or services. That disclosure shall be placed on or at the point-of-sale device as follows:

(1) For all point-of-sale devices, the fee disclosure shall be on a label meeting federal standards.

(2) For point-of-sale devices purchased on or after January 1, 2001, that have electronic displays, the fee disclosure shall also be electronic.

(c) For purposes of this section, the term "point-of-sale device" includes any device used for the purchase of a good or service where a personal identification number (PIN) is required, but does not include an access device as defined in subdivision (b) of Section 13020.

(d) For the purposes of this section, the term "operator of a point-of-sale device" means the person who imposes the fee on a customer for using a point-of-sale device to pay for a good or service.

CHAPTER 647

An act to add Section 30.5 to the Education Code, relating to education.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 30.5 is added to the Education Code, to read:

30.5. (a) (1) Notwithstanding any other provision of law, bilingual education shall be defined as a system of instruction which builds upon the language skills of a pupil whose primary language is neither English nor derived from English. For purposes of this paragraph:

(A) "Primary language" is a language, other than English or a language derived from English, which is the language the pupil first learned.

(B) "Derived from English" means any dialect, idiom, or language derived from English. Both of the following shall be construed as being derived from English:

(i) Any dialect, idiom, or language that has linguistic roots connected to English.

(ii) Any dialect, idiom, or language that has a syntax distinct from English, yet can be traced linguistically as derived from English.

(2) A school district shall not utilize, as part of a bilingual education program, state funds or resources for the purpose of

recognition of, or instruction in, any dialect, idiom, or language derived from English, as defined in paragraph (1).

(b) On or before June 1, 1998, each school district shall submit a written report to the Legislature and the State Board of Education relating to both of the following:

(1) The amount of state funds that the school district has diverted, as of January 1, 1996, from bilingual education programs for the purpose of recognition of, or instruction in, any dialect, idiom, or language derived from English.

(2) The amount of state funds that the school district has expended, as of January 1, 1996, as part of a bilingual program, for the purpose of recognition of, or instruction in, any dialect, idiom, or language derived from English.

(c) Any school district that has utilized state funds for either of the purposes set forth in paragraphs (1) and (2) of subdivision (b) shall restore all of the funds expended for these purposes to its bilingual program prior to January 1, 1999.

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 648

An act to amend Sections 5775, 5777, and 5778 of the Welfare and Institutions Code, relating to human services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 5775 of the Welfare and Institutions Code is amended to read:

5775. (a) Notwithstanding any other provision of state law, the State Department of Mental Health shall implement managed mental health care for Medi-Cal beneficiaries through fee-for-service or capitated rate contracts with mental health plans, including

individual counties, counties acting jointly, any qualified individual or organization, or a nongovernmental entity. A contract may be exclusive and may be awarded on a geographic basis.

(b) Two or more counties acting jointly may agree to deliver or subcontract for the delivery of mental health services. The agreement may encompass all or any portion of the mental health services provided pursuant to this part. This agreement shall not relieve the individual counties of financial responsibility for providing these services. Any agreement between counties shall delineate each county's responsibilities and fiscal liability.

(c) The department shall offer to contract with each county for the delivery of mental health services to that county's Medi-Cal beneficiary population prior to offering to contract with any other entity, upon terms at least as favorable as any offered to a noncounty contract provider. If a county elects not to contract with the department, does not renew its contract, or does not meet the minimum standards set by the department, the department may elect to contract with any other governmental or nongovernmental entity for the delivery of mental health services in that county and may administer the delivery of mental health services until a contract for a mental health plan is implemented. The county may not subsequently contract to provide mental health services under this part unless the department elects to contract with the county.

(d) If a county does not contract with the department to provide mental health services, the county shall transfer the responsibility for community Medi-Cal reimbursable mental health services and the anticipated county matching funds needed for community Medi-Cal mental health services in that county to the department. The amount of the anticipated county matching funds shall be determined by the department in consultation with the county, and shall be adjusted annually. The amount transferred shall be based on historical cost, adjusted for changes in the number of Medi-Cal beneficiaries and other relevant factors. The anticipated county matching funds shall be used by the department to contract with another entity for mental health services, and shall not be expended for any other purpose but the provision of those services and related administrative costs. The county shall continue to deliver non-Medi-Cal reimbursable mental health services in accordance with this division, and subject to subdivision (i) of Section 5777.

(e) (1) Whenever the department determines that a mental health plan has failed to comply with this part or any regulations adopted pursuant to this part that implement this part, the department may impose sanctions, including, but not limited to, fines, penalties, the withholding of payments, special requirements, probationary or corrective actions, or any other actions deemed necessary to prompt and ensure contract and performance compliance. If fines are imposed by the department, they may be

withheld from the state matching funds provided to a mental health plan for Medi-Cal mental health services.

(2) The department shall adopt emergency regulations necessary to implement paragraph (1), including the establishment of procedures for the appeal of an administrative finding relative to paragraph (1), in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The initial adoption of emergency regulations pursuant to this paragraph shall be filed with the Office of Administrative Law during the 1997–98 Regular Session of the Legislature, and be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare, and shall be exempt from the review or approval of the Office of Administrative Law. Regulations adopted pursuant to this paragraph shall remain in effect for not more than 180 days. These regulations shall be developed in consultation with a statewide organization representing counties.

(f) The department may adopt emergency regulations necessary to implement the payment systems in this part, in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of emergency regulations to implement this part, that are filed with the Office of Administrative Law within one year of the date on which the act that amended this subdivision in 1997 took effect, shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare, and shall remain in effect for no more than 180 days.

SEC. 2. Section 5777 of the Welfare and Institutions Code is amended to read:

5777. (a) (1) Except as otherwise specified in this part, a contract entered into pursuant to this part shall include a provision that the mental health plan contractor shall bear the financial risk for the cost of providing medically necessary mental health services to Medi-Cal beneficiaries irrespective of whether the cost of those services exceeds the payment set forth in the contract. If the expenditures for services do not exceed the payment set forth in the contract, the mental health plan contractor shall report the unexpended amount to the department, but shall not be required to return the excess to the department.

(2) If the mental health plan is not the county's, the mental health plan may not transfer the obligation for any mental health services to Medi-Cal beneficiaries to the county. The mental health plan may purchase services from the county. The mental health plan shall establish mutually agreed-upon protocols with the county that clearly establish conditions under which beneficiaries may obtain non-Medi-Cal reimbursable services from the county. Additionally, the plan shall establish mutually agreed-upon protocols with the

county for the conditions of transfer of beneficiaries who have lost Medi-Cal eligibility to the county for care under Part 2 (commencing with Section 5600), Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850).

(3) The mental health plan shall be financially responsible for ensuring access and a minimum required scope of benefits, consistent with state and federal requirements, to the services to the Medi-Cal beneficiaries of that county regardless of where the beneficiary resides. The department shall require that the definition of medical necessity used, and the minimum scope of benefits offered, by each mental health contractor be the same, except to the extent that any variations receive prior federal approval and are consistent with state and federal statutes and regulation.

(b) Any contract entered into pursuant to this part may be renewed if the plan continues to meet the requirements of this part, regulations promulgated pursuant thereto, and the terms and conditions of the contract. Contract renewal shall be on an annual basis. Failure to meet these requirements shall be cause for nonrenewal of the contract. The department may base the decision to renew on timely completion of a mutually agreed upon plan of correction of any deficiencies, submissions of required information in a timely manner, or other conditions of the contract.

(c) (1) The obligations of the mental health plan shall be changed only by contract or contract amendment.

(2) A change may be made during a contract term or at the time of contract renewal, where there is a change in obligations required by federal or state law or when required by a change in the interpretation or implementation of any law or regulation. To the extent permitted by federal law and except as provided under subdivision (r) of Section 5778, if any change in obligations occurs that affects the cost to the mental health plan of performing under the terms of its contract, the department may reopen contracts to negotiate the state General Fund allocation to the mental health plan under Section 5778, if the mental health plan is reimbursed through a fee-for-service payment system, or the capitation rate to the mental health plan under Section 5779, if the mental health plan is reimbursed through a capitated rate payment system. During the time period required to redetermine the allocation or rate, payment to the mental health plan of the allocation or rate in effect at the time the change occurred shall be considered interim payments and shall be subject to increase or decrease, as the case may be, effective as of the date on which the change is effective.

(3) To the extent permitted by federal law, either the department or the mental health plan may request that contract negotiations be reopened during the course of a contract due to substantial changes in the cost of covered benefits that result from an unanticipated event.

(d) The department shall immediately terminate a contract when the director finds that there is an immediate threat to the health and safety of Medi-Cal beneficiaries. Termination of the contract for other reasons shall be subject to reasonable notice of the department's intent to take that action and notification of affected beneficiaries. The plan may request a public hearing by the Office of Administrative Hearings.

(e) A plan may terminate its contract in accordance with the provisions in the contract. The plan shall provide written notice to the department at least 180 days prior to the termination or nonrenewal of the contract.

(f) Upon the request of the Director of Mental Health, the Commissioner of Corporations may exempt a mental health plan contractor or a capitated rate contract from 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). These exemptions may be subject to conditions the director deems appropriate. Nothing in this part shall be construed to impair or diminish the authority of the Commissioner of Corporations under the Knox-Keene Health Care Service Plan Act of 1975, nor shall anything in this part be construed to reduce or otherwise limit the obligation of a mental health plan contractor licensed as a health care service plan to comply with the requirements of the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Commissioner of Corporations promulgated thereunder. The Director of Mental Health, in consultation with the Commissioner of Corporations, shall analyze the appropriateness of licensure or application of applicable standards of the Knox-Keene Health Care Service Plan Act of 1975.

(g) The department, pursuant to an agreement with the State Department of Health Services, shall provide oversight to the mental health plans to ensure quality, access, and cost efficiency. At a minimum, the department shall, through a method independent of any agency of the mental health plan contractor, monitor the level and quality of services provided, expenditures pursuant to the contract, and conformity with federal and state law.

(h) County employees implementing or administering a mental health plan act in a discretionary capacity when they determine whether or not to admit a person for care or to provide any level of care pursuant to this part.

(i) If a county chooses to discontinue operations as the local mental health plan, the new plan shall give reasonable consideration to affiliation with nonprofit community mental health agencies that were under contract with the county and that meet the mental health plan's quality and cost efficiency standards.

(j) Nothing in this part shall be construed to modify, alter, or increase the obligations of counties as otherwise limited and defined in Chapter 3 (commencing with Section 5700) of Part 2. The county's

maximum obligation for services to persons not eligible for Medi-Cal shall be no more than the amount of funds remaining in the mental health subaccount pursuant to Sections 17600, 17601, 17604, 17605, 17606, and 17609 after fulfilling the Medi-Cal contract obligations.

SEC. 3. Section 5778 of the Welfare and Institutions Code is amended to read:

5778. (a) This section shall be limited to mental health services reimbursed through a fee-for-service payment system.

(b) During the initial phases of the implementation of this part, as determined by the department, the mental health plan contractor and subcontractors shall submit claims under the Medi-Cal program for eligible services on a fee-for-service basis.

(c) A qualifying county may elect, with the approval of the department, to operate under the requirements of a capitated, integrated service system field test pursuant to Section 5719.5 rather than this part, in the event the requirements of the two programs conflict. A county that elects to operate under that section shall comply with all other provisions of this part that do not conflict with that section.

(d) (1) No sooner than October 1, 1994, state matching funds for Medi-Cal fee-for-service acute psychiatric inpatient services, and associated administrative days, shall be transferred to the department. No later than July 1, 1997, upon agreement between the department and the State Department of Health Services, state matching funds for the remaining Medi-Cal fee-for-service mental health services and the state matching funds associated with field test counties under Section 5719.5 shall be transferred to the department.

(2) The department, in consultation with the State Department of Health Services, a statewide organization representing counties, and a statewide organization representing health maintenance organizations shall develop a timeline for the transfer of funding and responsibility for fee-for-service mental health services from Medi-Cal managed care plans to mental health plans. In developing the timeline, the department shall develop screening, referral, and coordination guidelines to be used by Medi-Cal managed care plans and mental health plans.

(e) The department shall allocate the contracted amount at the beginning of the contract period to the mental health plan. The allocated funds shall be considered to be funds of the plan that may be held by the department. The department shall develop a methodology to ensure that these funds are held as the property of the plan and shall not be reallocated by the department or other entity of state government for other purposes.

(f) Beginning in the fiscal year following the transfer of funds from the State Department of Health Services, the state matching funds for Medi-Cal mental health services shall be included in the annual budget for the department. The amount included shall be based on

historical cost, adjusted for changes in the number of Medi-Cal beneficiaries and other relevant factors.

(g) Initially, the mental health plans shall use the fiscal intermediary of the Medi-Cal program of the State Department of Health Services for the processing of claims for inpatient psychiatric hospital services and may be required to use that fiscal intermediary for the remaining mental health services. The providers for other Short-Doyle Medi-Cal services shall not be initially required to use the fiscal intermediary but may be required to do so on a date to be determined by the department. The department and its mental health plans shall be responsible for the initial incremental increased matching costs of the fiscal intermediary for claims processing and information retrieval associated with the operation of the services funded by the transferred funds.

(h) The mental health plans, subcontractors, and providers of mental health services shall be liable for all federal audit exceptions or disallowances based on their conduct or determinations. The mental health plan contractors shall not be liable for federal audit exceptions or disallowances based on the state's conduct or determinations. The department and the State Department of Health Services shall work jointly with mental health plans in initiating any necessary appeals. The State Department of Health Services may offset the amount of any federal disallowance or audit exception against subsequent claims from the mental health plan or subcontractor. This offset may be done at any time, after the audit exception or disallowance has been withheld from the federal financial participation claim made by the State Department of Health Services. The maximum amount that may be withheld shall be 25 percent of each payment to the plan or subcontractor.

(i) The mental health plans shall have sufficient funds on deposit with the department as the matching funds necessary for federal financial participation to ensure timely payment of claims for acute psychiatric inpatient services and associated administrative days. The department and the State Department of Health Services, in consultation with a statewide organization representing counties, shall establish a mechanism to facilitate timely availability of those funds. Any funds held by the state on behalf of a plan shall be deposited in a mental health managed care deposit fund and shall accrue interest to the plan. The department shall exercise any necessary funding procedures pursuant to Section 12419.5 of the Government Code and Sections 8776.6 and 8790.8 of the State Administrative Manual regarding county claim submission and payment.

(j) (1) The goal for funding of the future capitated system shall be to develop statewide rates for beneficiary, by aid category and with regional price differentiation, within a reasonable time period. The formula for distributing the state matching funds transferred to

the department for acute inpatient psychiatric services to the participating counties shall be based on the following principles:

(A) Medi-Cal state General Fund matching dollars shall be distributed to counties based on historic Medi-Cal acute inpatient psychiatric costs for the county's beneficiaries and on the number of persons eligible for Medi-Cal in that county.

(B) All counties shall receive a baseline based on historic and projected expenditures up to October 1, 1994.

(C) Projected inpatient growth for the period October 1, 1994, to June 30, 1995, inclusive, shall be distributed to counties below the statewide average per eligible person on a proportional basis. The average shall be determined by the relative standing of the aggregate of each county's expenditures of mental health Medi-Cal dollars per beneficiary. Total Medi-Cal dollars shall include both fee-for-service Medi-Cal and Short-Doyle Medi-Cal dollars for both acute inpatient psychiatric services, outpatient mental health services, and psychiatric nursing facility services, both in facilities that are not designated as institutions for mental disease and for beneficiaries who are under 22 years of age and beneficiaries who are over 64 years of age in facilities that are designated as institutions for mental disease.

(D) There shall be funds set aside for a self-insurance risk pool for small counties. The department may provide these funds directly to the administering entity designated in writing by all counties participating in the self-insurance risk pool. The small counties shall assume all responsibility and liability for appropriate administration of these funds. For purposes of this subdivision, "small counties" means counties with less than 200,000 population. Nothing in this paragraph shall in any way obligate the state or the department to provide or make available any additional funds beyond the amount initially appropriated and set aside for each particular fiscal year, unless otherwise authorized in statute or regulations, nor shall the state or the department be liable in any way for mismanagement of loss of funds by the entity designated by the counties under this paragraph.

(2) The allocation method for state funds transferred for acute inpatient psychiatric services shall be as follows:

(A) For the 1994–95 fiscal year, an amount equal to 0.6965 percent of the total shall be transferred to a fund established by small counties. This fund shall be used to reimburse mental health plans in small counties for the cost of acute inpatient psychiatric services in excess of the funding provided to the mental health plan for risk reinsurance, acute inpatient psychiatric services and associated administrative days, alternatives to hospital services as approved by participating small counties, or for costs associated with the administration of these moneys. The methodology for use of these moneys shall be determined by the small counties, through a

statewide organization representing counties, in consultation with the department.

(B) The balance of the transfer amount for the 1994–95 fiscal year shall be allocated to counties based on the following formula:

County	Percentage
Alameda	3.5991
Alpine	.0050
Amador	.0490
Butte	.8724
Calaveras	.0683
Colusa	.0294
Contra Costa	1.5544
Del Norte	.1359
El Dorado	.2272
Fresno	2.5612
Glenn	.0597
Humboldt	.1987
Imperial	.6269
Inyo	.0802
Kern	2.6309
Kings	.4371
Lake	.2955
Lassen	.1236
Los Angeles	31.3239
Madera	.3882
Marin	1.0290
Mariposa	.0501
Mendocino	.3038
Merced	.5077
Modoc	.0176
Mono	.0096
Monterey	.7351
Napa	.2909
Nevada	.1489
Orange	8.0627
Placer	.2366
Plumas	.0491
Riverside	4.4955
Sacramento	3.3506
San Benito	.1171

San Bernardino	6.4790
San Diego	12.3128
San Francisco	3.5473
San Joaquin	1.4813
San Luis Obispo	.2660
San Mateo	.0000
Santa Barbara	.0000
Santa Clara	1.9284
Santa Cruz	1.7571
Shasta	.3997
Sierra	.0105
Siskiyou	.1695
Solano	.0000
Sonoma	.5766
Stanislaus	1.7855
Sutter/Yuba	.7980
Tehama	.1842
Trinity	.0271
Tulare	2.1314
Tuolumne	.2646
Ventura	.8058
Yolo	.4043

(k) The allocation method for the state funds transferred for subsequent years for acute inpatient psychiatric and other mental health services shall be determined by the department in consultation with a statewide organization representing counties.

(*l*) The allocation methodologies described in this section shall only be in effect while federal financial participation is received on a fee-for-service reimbursement basis. When federal funds are capitated, the department, in consultation with a statewide organization representing counties, shall determine the methodology for capitation consistent with federal requirements.

(m) The formula that specifies the amount of state matching funds transferred for the remaining Medi-Cal fee-for-service mental health services shall be determined by the department in consultation with a statewide organization representing counties. This formula shall only be in effect while federal financial participation is received on a fee-for-service reimbursement basis.

(n) Upon the transfer of funds from the budget of the State Department of Health Services to the department pursuant to subdivision (d), the department shall assume the applicable program oversight authority formerly provided by the State Department of Health Services, including, but not limited to, the oversight of

utilization controls as specified in Section 14133. The mental health plan shall include a requirement in any subcontracts that all inpatient subcontractors maintain necessary licensing and certification. Mental health plans shall require that services delivered by licensed staff are within their scope of practice. Nothing in this part shall prohibit the mental health plans from establishing standards that are in addition to the minimum federal and state requirements, provided that these standards do not violate federal and state Medi-Cal requirements and guidelines.

(o) Subject to federal approval and consistent with state requirements, the mental health plan may negotiate rates with providers of mental health services.

(p) Under the fee-for-service payment system, any excess in the payment set forth in the contract over the expenditures for services by the plan shall be spent for the provision of mental health services and related administrative costs.

(q) Nothing in this part shall limit the mental health plan from being reimbursed appropriate federal financial participation for any qualified services even if the total expenditures for service exceeds the contract amount with the department. Matching nonfederal public funds shall be provided by the plan for the federal financial participation matching requirement.

(r) (1) The department shall establish, by regulation, a risk-sharing arrangement between the department and counties that contract with the department as mental health plans to provide an increase in the state General Fund allocation, subject to the availability of funds, to the mental health plan under this section, where there is a change in the obligations of the mental health plan required by federal or state law or regulation, or required by a change in the interpretation or implementation of any such law or regulation which significantly increases the cost to the mental health plan of performing under the terms of its contract.

(2) During the time period required to redetermine the allocation, payment to the mental health plan of the allocation in effect at the time the change occurred shall be considered an interim payment, and shall be subject to increase effective as of the date on which the change is effective.

(3) In order to be eligible to participate in the risk-sharing arrangement, the county shall demonstrate, to the satisfaction of the department, its commitment or plan of commitment of all annual funding identified in the total mental health resource base, from whatever source, but not including county funds beyond the required maintenance of effort, to be spent on mental health services. This determination of eligibility shall be made annually. The department may limit the participation in a risk-sharing arrangement of any county that transfers funds from the mental health account to the social services account or the health services account, in accordance with Section 17600.20 during the year to

which the transfers apply to mental health plan expenditures for the new obligation that exceed the total mental health resource base, as measured before the transfer of funds out of the mental health account and not including county funds beyond the required maintenance of effort. The State Department of Mental Health shall participate in a risk-sharing arrangement only after a county has expended its total annual mental health resource base.

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 coordinate and prevent duplication of mental health services for Medi-Cal beneficiaries, to provide access to a broader system of care so that the provision of specialty mental health services and the growth in the cost of funding those services is reduced, and to provide an orderly transfer of responsibilities to the State Department of Mental Health to implement managed mental health care for Medi-Cal beneficiaries, it is necessary that this act go into immediate effect.

CHAPTER 649

An act to add Section 14087.329 to the Welfare and Institutions Code, relating to health facilities.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 14087.329 is added to the Welfare and Institutions Code, to read:

14087.329. (a) The department may establish, for local initiative and for commercial plans, that are providing services to Medi-Cal beneficiaries under a two-plan model contract with the department, not more than two pilot programs for the establishment of reimbursement methodologies. The reimbursement methodologies shall not be limited to those provided in Section 14087.325. The pilot programs may be implemented by amendment to the contract between the department and the local initiative or commercial plan. The department may select the pilot program county or counties on a nonbid basis. The selected counties shall include one county with a sizable number of entities defined in Section 1396d(*l*)(2)(B) of Title 42 of the United States Code. The department shall review each pilot program annually. Following the review, and notwithstanding any determination made pursuant to subdivision (d), the department shall terminate a pilot program established under this

section and shall delete amendments made to the contract implementing the pilot program if the department determines that the pilot program creates any additional cost to the General Fund. The department may also terminate a pilot program based upon criteria specified in the department's contract establishing the pilot program. The department shall provide the local initiative and commercial plan with notice of the department's decision to terminate the pilot program for this reason at least 90 days prior to the termination date of the pilot program and deletion of the contract amendments.

(b) Each local initiative and commercial plan participating in a pilot program under this section shall make available to the department any and all financial, membership, utilization, and other information reasonably required by the department to conduct the annual review described in subdivision (a). The information may include, but is not limited to, the financial or other records of participating providers. The amendment to the contract between the local initiative or commercial plan and the department establishing the pilot program shall specify a reasonable timeframe in which the commercial plan or local initiative shall furnish records to the department pursuant to the request of the department.

(c) In assessing whether the pilot program creates any additional cost to the General Fund, as described in subdivision (a), the department shall specifically consider all of the following factors, and may consider additional factors:

(1) Increases in the number of Medi-Cal beneficiaries assigned by the plan to cost-based primary care providers. To enable the department to evaluate these factors, the department may include in the contract amendments establishing the pilot program a requirement that contractors shall periodically report data regarding the number of plan members assigned to each cost-based primary care provider in the plan's network.

(2) Expansions in the services provided by providers entitled to cost-based reimbursement under the Medi-Cal program.

(3) Medi-Cal caseload or plan membership growth.

(4) Inflation or other reasonable costs of provider operations.

(5) The necessity for a plan to assign plan members to specific primary care providers to meet all of the following requirements:

(A) Medi-Cal contract requirements for access to care.

(B) Unique Medi-Cal member cultural and linguistic needs.

(C) Unique member needs for age-appropriate, gender-appropriate, or pregnancy care requirements.

(d) The pilot program shall be deemed to be successful if the alternative reimbursement methodologies tested result in no additional cost to the General Fund as described in subdivision (c), and the local initiatives, commercial plans, and federally qualified health centers participating in the pilot program agree to accept full

financial risk for the scope of services provided by the federally qualified health centers during the final year of the pilot program.

CHAPTER 650

An act relating to highways, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) (1) The Trabuco Creek Trail Project is being carried out in conjunction with the construction of the Foothill Transportation Corridor, State Highway Route 241, in Orange County in order to mitigate the adverse environmental effects of the highway project.

(2) The Sierra Azul Resource Lands Project is being carried out in conjunction with the construction of the Lexington Interchange Project on State Highway Route 17 in Santa Clara County in order to mitigate the adverse environmental effects of the highway project.

(b) Item 2660-125-183 of Section 2.00 of the Budget Act of 1994 (Ch. 139, Stats. 1994) appropriated funds to the Department of Transportation, payable from the Environmental Enhancement and Mitigation Demonstration Program Fund, for allocation to projects, including all of the following:

(1) Four hundred thousand dollars ($400,000) for the Trabuco Creek Trail Project, to mitigate the adverse environmental effects of transportation facilities.

(2) Two hundred twenty-six thousand two hundred fifty-nine dollars ($226,259) for the Sierra Azul Resource Lands Project to mitigate the adverse environmental impacts of transportation facilities.

(c) Because the following unforeseen occurrences prevented the Trabuco Creek Trail Project from being completed in time to avoid reversion of the previously appropriated funds, it is necessary to reappropriate those funds to make them available for the completion of the Trabuco Creek Trail bridge overcrossing:

(1) The County of Orange declared bankruptcy on December 4, 1994, which caused a delay in entering into contracts.

(2) Flooding and heavy rainfall washed away the shelf prepared for the trail undercrossing.

(3) The Foothill Transportation Corridor was constructed at a significantly lower elevation than envisioned during trail planning. The lower elevation of the proposed trail undercrossing required that

the trail approaching the corridor be lengthened significantly to create a gentler slope (4.5 percent grade). Additional environmental review showed that the new trail realignment for the undercrossing would cause significant impacts to endangered species habitats (6 acres of oak woodland and coastal sage scrub). As a result, the county has selected the environmentally sensitive alternative, a trail bridge over the corridor in lieu of the undercrossing.

(d) Changes in project scope due to land owner issues, and delays in grant application and contract processing, prevented the Sierra Azul Resource Lands Project from being completed in time to avoid a reversion of previously appropriated funds. Therefore it is necessary to reappropriate those funds to make them available for the completion of this mitigation project.

SEC. 2. (a) Notwithstanding any other provision of law, the sum of four hundred thousand dollars ($400,000), payable from the Environmental Enhancement and Mitigation Demonstration Program Fund, is appropriated to the Department of Transportation for allocation to complete the Trabuco Creek Trail bridge overcrossing of the Foothill Transportation Corridor in Orange County.

(b) Notwithstanding any other provision of law, the sum of two hundred twenty-six thousand two hundred fifty-nine dollars ($226,259), payable from the Environmental Enhancement and Mitigation Demonstration Program Fund, is appropriated to the Department of Transportation for allocation to the completion of the Sierra Azul Resource Lands Project by the Midpeninsula Regional Open Space District in Santa Clara County.

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

Because various delays prevented certain highway environmental mitigation projects from being completed in the time specified, it is necessary for this act, which will enable the timely completion of those projects, to take effect immediately.

CHAPTER 651

An act to amend Sections 21744, 21745, 22001.5, 22008, 55403, 56109, and 56161 of, and to add Sections 22037 and 55462 to, the Food and Agricultural Code, relating to agriculture.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 21744 of the Food and Agricultural Code is amended to read:

21744. Cattle shall not be released from a public stockyard, public salesyard, public cattle sales market, or any other public consignment sale or private auction sale unless they are accompanied by a brand inspection certificate or by a press-numbered bill of sale or a press-numbered certificate of sale that is issued and signed by a representative of the salesyard, as agents for the consignor.

SEC. 1.5. Section 21745 of the Food and Agricultural Code is amended to read:

21745. The press-numbered bill of sale or press-numbered certificate of sale that is required pursuant to Section 21744 shall contain all of the following information on a form that is approved by the chief:

(a) Date of sale.

(b) Name and address of the buyer.

(c) Description of each animal that is sold that includes its brands and brand location, sex, and breed of unbranded animals.

(d) Origin and destination of the animals.

(e) The name of the person conducting the sale.

The press-numbered bill of sale or press-numbered certificate of sale shall be kept by the seller for a period of one year after the date of sale. Any such document shall be exhibited on the demand of any peace officer or any agent of the department.

SEC. 1.6. Section 22001.5 of the Food and Agricultural Code is amended to read:

22001.5. The Legislature finds and declares that mobile slaughter operators who perform the service of slaughtering cattle for the owner of the cattle on the owner's premises are not licensed slaughterers pursuant to this chapter. However, on and after January 15, 1998, a mobile slaughter operator shall be registered with the bureau as an unlicensed mobile slaughterer pursuant to Section 22037 and is subject to Section 22008.

SEC. 2. Section 22008 of the Food and Agricultural Code is amended to read:

22008. Every person that is not a licensed slaughterer that slaughters cattle shall do all of the following:

(a) Keep a record in a book which he or she keeps for that purpose of all cattle that are slaughtered by him or her. The record shall include the name, address, and telephone number of the person for whom the cattle are slaughtered, a full description of the cattle, including the brands and marks, the date of slaughter, and the name and location of the food locker to which the slaughtered animal is, or the slaughtered animals are, delivered for butchering.

(b) Exhibit the record book on demand of any inspector or peace officer.

(c) Notify a brand inspector within 24 hours if he slaughters a bovine animal and does not deliver the carcass and hide to a frozen food locker plant licensed pursuant to Chapter 7 (commencing with Section 112500) of Part 6 of Division 104 of the Health and Safety Code.

SEC. 3. Section 22037 is added to the Food and Agricultural Code, to read:

22037. (a) A mobile slaughter operator, as provided in Section 22001.5, shall file a registration with the bureau that shows the names and addresses of the owners of the unlicensed mobile slaughterer and any other information the secretary may require.

(b) The registration shall be filed with the bureau before a mobile slaughter operator may slaughter cattle pursuant to Section 22001.5.

(c) After notice and hearing, the secretary may cancel the registration of any unlicensed mobile slaughterer for failing to comply with Section 22001.5 or 22008.

SEC. 4. Section 55403 of the Food and Agricultural Code is amended to read:

55403. "Farm product" includes every agricultural, horticultural, viticultural, or vegetable product of the soil, honey and beeswax, oilseeds, poultry, poultry product, livestock product, and livestock for immediate slaughter. It does not include timber or any timber product, milk or any milk product, any aquacultural product, or cattle sold to any person who is bonded under the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.).

SEC. 5. Section 55462 is added to the Food and Agricultural Code, to read:

55462. For the purposes of trading in cattle, this chapter does not apply to or include any person who is bonded under the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.) who is engaged in the business of buying or selling cattle.

SEC. 6. Section 56109 of the Food and Agricultural Code is amended to read:

56109. "Farm product" includes every agricultural, horticultural, viticultural, and vegetable product of the soil, poultry and poultry products, livestock products and livestock not for immediate slaughter, bees and apiary products, hay, dried beans, honey, and cut flowers. It does not, however, include any timber or timber product, flower or agricultural or vegetable seed not purchased from a producer, any milk product which is subject to the licensing and bonding provisions of Chapter 2 (commencing with Section 61801) of Part 3 of Division 21, any aquacultural product, or cattle sold to any person who is bonded under the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.).

SEC. 7. Section 56161 of the Food and Agricultural Code is amended to read:

56161. This chapter does not apply to or include any of the following:

(a) Any nonprofit cooperative association organized and operating pursuant to Chapter 1 (commencing with Section 54001), any nonprofit cooperative association organized and operating pursuant to any similar law of any other state, the District of Columbia, or the United States, or the agents of these organizations, except as to the activities of these organizations or agents that involve the handling of, or dealing in, any farm product of a nonmember of the organization.

(b) Any person or exchange that buys, receives, or otherwise handles any farm product as a processor, as defined in Section 55407.

(c) Any retail merchant who has a fixed or established place of business in this state. This exemption does not, however, apply to retail merchants who are also engaged in the business of selling, at wholesale, any farm product purchased from a licensee or producer. The exemption does not apply to any transaction wherein possession of any farm product is obtained from a licensee or producer, and the farm product is sold to another person without being handled in the regular course of a retail business which is conducted at a fixed and established place.

(d) Any person who buys any farm product for his or her own use or consumption.

(e) Any person licensed as a distributor or handler under Chapter 2 (commencing with Section 61801) of Part 3 of Division 21 who purchases farm products from a dealer, broker, or commission merchant. However, this chapter applies to any such licensed person who purchases farm products from a producer.

(f) Any person licensed as a landscape contractor pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

(g) Any person, not otherwise required to be licensed pursuant to this chapter, who buys or otherwise acquires possession of any farm product from, and processed by, a nonprofit cooperative association to which subdivision (a) is applicable.

(h) For the purposes of trading in cattle, any person engaged in the business of buying or selling cattle who is bonded under the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.).

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 652

An act to amend Section 16728 of the Business and Professions Code, to amend Sections 728.5, 4001, and 5003.1 of, and to repeal Section 5003.3 of, the Public Utilities Code, to amend Sections 7231 and 7232 of the Revenue and Taxation Code, and to amend Sections 471, 1808.1, 16020, 34505.6, 34507.5, 34601, 34620, 34621, 34623, 34624, 34631, 34631.5, 34660, and 34670 of, to add Section 34505.10 to, and to repeal Section 34650 of, the Vehicle Code, relating to vehicles.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 16728 of the Business and Professions Code is amended to read:

16728. (a) Notwithstanding any other provision of law, motor carriers of property, as defined in Section 34601 of the Vehicle Code, may voluntarily elect to participate in uniform cargo liability rules, uniform bills of lading or receipts for property being transported, uniform cargo credit rules, joint line rates or routes, classifications and mileage guides and pooling. Motor carriers of property that so elect shall comply with all requirements of Section 14501(c) of Title 49 of the United States Code and with federal regulations promulgated pursuant thereto. The Legislature intends by this section to provide to motor carriers of property the antitrust immunity authorized by state action pursuant to Section 14501(c) of Title 49 of the United States Code.

(b) The election authorized by this section shall be exercised in either of the following ways:

(1) Participation in an agreement pursuant to Section 13703 of Title 49 of the United States Code.

(2) Filing with the Secretary of State a notice of adoption of any or all of the uniform cargo liability rules, uniform bills of lading or receipts for property being transported, uniform cargo credit rules, and joint rates or routes, classifications, mileage guides, and pooling contained in an identified publication authorized by Section 13703 of Title 49 of the United States Code, along with a written certification issued by the organization establishing those uniform rules or provisions in accordance with 49 U.S.C. 13703(g)(1)(B), affirming participation of the motor carrier of property in the collective publication. The certification shall be made available for public inspection.

(c) The elections made by a motor carrier of property pursuant to this section may be canceled by the motor carrier.

SEC. 2. Section 728.5 of the Public Utilities Code is amended to read:

728.5. The commission may establish rates or charges for the transportation of passengers and freight by railroads and other transportation companies, except motor carriers of property, and no railroad or other transportation company under its jurisdiction, except motor carriers of property, shall charge or demand or collect or receive a greater or less or different compensation for that transportation of passengers or freight, or for any service in connection therewith, between the points named in any tariff of rates established by the commission than the rates, fares and charges which are specified in that tariff. The commission may examine books, records and papers of all railroad and other transportation companies, except motor carriers of property; may hear and determine complaints against railroad and other transportation companies; and may issue subpoenas and all necessary process and send for persons and papers. The commission and each of the commissioners may administer oaths, take testimony and punish for contempt in the same manner and to the same extent as courts of record. The commission may prescribe a uniform system of accounts to be kept by all railroad and other transportation companies, except motor carriers of property.

SEC. 3. Section 4001 of the Public Utilities Code is amended to read:

4001. (a) For purposes of this chapter, "private carrier" means a not-for-hire motor carrier, as defined in Section 408 of the Vehicle Code, who transports passengers and is required to obtain a carrier identification number pursuant to Section 34507.5 of the Vehicle Code, but does not include persons providing transportation services specified in subdivision (k) or (*l*) of Section 5353.

(b) For purposes of this chapter, "department" means the Department of the California Highway Patrol.

SEC. 4. Section 5003.1 of the Public Utilities Code is amended to read:

5003.1. Every household goods carrier owning or operating motor vehicles in the transportation of property for hire upon the public highways under the jurisdiction of the commission shall, between the first and 15th days of January, April, July, and October of each year, file with the commission a statement showing the gross operating revenue derived by that person or corporation from the transportation of property for the preceding three calendar months, and shall, at the time of filing the report, pay to the commission a fee of fifteen dollars ($15) for each quarter. Five dollars ($5) from each fifteen dollars ($15) quarterly base fee shall be allocated on a quarterly basis to the Motor Carriers Safety Improvement Fund. Every household goods carrier owning or operating motor vehicles

in the transportation of property for hire upon the public highways under the jurisdiction of the commission shall, at the time of filing the report, pay to the commission a fee equal to one-third of 1 percent of the amount of the gross operating revenue, except as follows:

(a) For any particular fiscal year, the commission, with the approval of the Department of Finance, may fix the fee at less than one-third of 1 percent of that amount.

(b) The commission may increase the fee pursuant to subdivision (b) of Section 5003.2.

SEC. 5. Section 5003.3 of the Public Utilities Code is repealed.

SEC. 6. Section 7231 of the Revenue and Taxation Code is amended to read:

7231. (a) This chapter may be cited as the Motor Carriers of Property Permit Fee Act.

(b) The Legislature finds and declares that a safe and efficient transportation system is essential to the welfare of the state, and an important part of the system is service rendered by motor carriers of property.

SEC. 7. Section 7232 of the Revenue and Taxation Code is amended to read:

7232. (a) Every motor carrier of property shall annually pay a permit fee to the Department of Motor Vehicles. The fees contained in this section are due and shall be paid by each carrier at the time of application for an initial motor carrier permit, and upon annual renewal, with the Department of Motor Vehicles, pursuant to the Motor Carriers of Property Permit Act, as set forth in Division 14.85 (commencing with Section 34600) of the Vehicle Code. The Department of Motor Vehicles may, upon initial application for a motor carrier permit, assign an expiration date not less than six months, nor more than 18 months, from date of application, and may charge one-twelfth of the annual fee for each month covered by the initial permit. The fee paid by each motor carrier of property shall be based on the number of commercial motor vehicles operated in California by the motor carrier of property.

(b) As used in this chapter, "motor carrier of property" means any person who operates any commercial motor vehicle as defined in subdivision (d). "Motor carrier of property" does not include household goods carriers, as defined in Section 5109 of the Public Utilities Code, persons providing only transportation of passengers, or a passenger stage corporation transporting baggage and express upon a passenger vehicle incidental to the transportation of passengers.

(c) As used in this chapter, "for-hire motor carrier of property" means a motor carrier of property, as defined in subdivision (b), who transports property for compensation.

(d) As used in this chapter, "commercial motor vehicle" means any self-propelled vehicle listed in subdivisions (a), (b), (f), (g), and (k) of Section 34500 of the Vehicle Code, any motor truck of two or

more axles that is more than 10,000 pounds gross vehicle weight rating, and any other motor vehicle used to transport property for compensation. "Commercial motor vehicle" does not include vehicles operated by household goods carriers, as defined in Section 5109 of the Public Utilities Code, pickup trucks as defined in Section 471, and two-axle daily rental trucks with gross vehicle weight ratings less than 26,001 pounds when operated in noncommercial use.

(e) The "number of commercial motor vehicles operated by the motor carrier of property" as used in this section means all of the commercial motor vehicles owned, registered to, or leased by the carrier. For interstate and foreign motor carriers of property the fees set forth in subdivision (a) shall be apportioned based on the percentage of fleet miles traveled in California in intrastate commerce. In the absence of records to establish intrastate fleet miles, the fees set forth in subdivision (a) shall be apportioned on total fleet miles traveled in California.

(f) For purposes of this chapter, "private carrier" means a motor carrier of property, as defined in subdivision (b), who does not transport any goods or property for compensation.

(g) (1) Fees contained in this chapter shall not apply to a motor carrier of property while engaged solely in interstate or foreign transportation of property by motor vehicle. No motor carrier of property shall engage in any interstate or foreign transportation of property for compensation by motor vehicle on any public highway in this state without first having registered the operation with the Department of Motor Vehicles or with the carrier's base registration state, if other than California, as determined in accordance with final regulations issued by the Interstate Commerce Commission pursuant to the Intermodal Surface Efficiency Act of 1991 (49 U.S.C. Sec. 11506). To register with the Department of Motor Vehicles, carriers specified in this subdivision shall comply with the following:

(A) When the operation requires authority from the Interstate Commerce Commission under the Interstate Commerce Act, or authority from another federal regulatory agency, a copy of that authority shall be filed with the initial application for registration. A copy of any additions or amendments to the authority shall be filed with the Department of Motor Vehicles.

(B) If the operation does not require authority from the Interstate Commerce Commission under the Interstate Commerce Act, or authority from another federal regulatory agency, an affidavit of that exempt status shall be filed with the application for registration.

(2) The Department of Motor Vehicles shall grant registration upon the filing of the application pursuant to applicable law and the payment of any applicable fees, subject to the carrier's compliance with this chapter.

(3) This subdivision does not apply to household goods carriers, as defined in Section 5109 of the Public Utilities Code, and motor

carriers engaged in the transportation of passengers for compensation.

SEC. 8. Section 471 of the Vehicle Code is amended to read:

471. A "pickup truck" is a motor truck with a manufacturer's gross vehicle weight rating of less than 11,500 pounds, an unladen weight of less than 8,001 pounds, and which is equipped with an open box-type bed not exceeding 9 feet in length. "Pickup truck" does not include a motor vehicle otherwise meeting the above definition, that is equipped with a bed-mounted storage compartment unit commonly called a "utility body."

SEC. 9. Section 1808.1 of the Vehicle Code is amended to read:

1808.1. (a) The prospective employer of a driver who drives any vehicle specified in subdivision (*l*) shall obtain a report showing the driver's current public record as recorded by the department. For purposes of this subdivision, a report is current if it was issued less than 30 days prior to the date the employer employs the driver. The report shall be reviewed, signed, and dated by the employer and maintained at the employer's place of business until receipt of the pull notice system report pursuant to subdivisions (b) and (c). These reports shall be presented upon request to any authorized representative of the Department of the California Highway Patrol during regular business hours.

(b) The employer of a driver who drives any vehicle specified in subdivision (*l*) shall participate in a pull notice system, which is a process for the purpose of providing the employer with a report showing the driver's current public record as recorded by the department, and any subsequent convictions, failures to appear, accidents, driver's license suspensions, driver's license revocations, or any other actions taken against the driving privilege or certificate, added to the driver's record while the employer's notification request remains valid and uncanceled. As used in this section, participation in the pull notice system means obtaining a requester code and enrolling all employed drivers who drive any vehicle specified in subdivision (*l*) under that requester code.

(c) The employer of a driver of any vehicle specified in subdivision (*l*) shall, additionally, obtain a periodic report from the department at least every six months, except that an employer who enrolls more than 500 drivers in the pull notice system under a single requester code shall obtain a report at least every 12 months. The employer shall verify that each employee's driver's license has not been suspended or revoked, the employee's traffic violation point count, and whether the employee has been convicted of a violation of Section 23152 or 23153. The report shall be signed and dated by the employer and maintained at the employer's principal place of business. The reports shall be presented upon demand to any authorized representative of the Department of the California Highway Patrol during regular business hours.

(d) Upon the termination of a driver's employment, the employer shall notify the department to discontinue the driver's enrollment in the pull notice system.

(e) For the purposes of the pull notice system and periodic report process required by subdivisions (b) and (c), owners, other than owner-operators as defined in Section 34624, and employers who drive vehicles described in subdivision (*l*), shall be enrolled as if they were employees. Family members and volunteer drivers who drive vehicles described in subdivision (*l*) shall also be enrolled as if they were employees.

(f) An employer who, after receiving any driving record pursuant to this section, employs or continues to employ as a driver any person against whom a disqualifying action has been taken regarding his or her driving privilege or required driver's certificate, is guilty of a public offense, and upon conviction thereof, shall be punished by imprisonment in the county jail for not more than six months, by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(g) As part of its inspection of bus maintenance facilities and terminals required at least once every 13 months pursuant to subdivision (c) of Section 34501, the Department of the California Highway Patrol shall determine whether each transit operator, as defined in Section 99210 of the Public Utilities Code, is then in compliance with this section and Section 12804.6, and shall certify each operator found to be in compliance. No funds shall be allocated under Chapter 4 (commencing with Section 99200) of Part 11 of Division 10 of the Public Utilities Code to a transit operator which the Department of the California Highway Patrol has not certified under this section.

(h) A request to participate in the pull notice system established by this section shall be accompanied by a fee determined by the department to be sufficient to defray the entire actual cost to the department for the notification service. For the receipt of subsequent reports, the employer shall also be charged a fee established by the department pursuant to Section 1811. Any employer who qualifies under Section 1812 shall be exempt from any fee required under this section. Failure to pay the fee shall result in automatic cancellation of the employer's participation in the notification services.

(i) The department, as soon as feasible, may establish an automatic procedure to provide the periodic reports in subdivision (c) to employers on a regular basis without the need for individual requests.

(j) This section shall not be construed to change the definition of "employer," "employee," or "independent contractor" for any other purpose.

(k) The employer of a driver who is employed as a casual driver is not required to enter that driver's name in the pull notice system, as otherwise required by subdivision (a). However, the employer of

a casual driver shall be in possession of a report of the driver's current public record as recorded by the department, prior to allowing a casual driver to drive any vehicle specified in subdivision (*l*). A report is current if it was issued less than six months prior to the date the employer employs the driver. As used in this subdivision, a driver is employed as a casual driver when the employer has employed the driver less than 30 days during the preceding six months. For purposes of this subdivision, "casual driver" does not include any driver who operates a vehicle that requires a passenger transportation endorsement.

(*l*) This section applies to any vehicle for the operation of which the driver is required to have a class 1, class 2, class A, or class B driver's license, a class C license with a hazardous materials endorsement, or a certificate issued pursuant to Section 2512, 12517, 12519, 12520, 12523, or 12523.5, or any passenger vehicle having a seating capacity of not more than 10 persons, including the driver, operated for compensation by a charter-party carrier of passengers or passenger stage corporation pursuant to a certificate of public convenience and necessity or a permit issued by the Public Utilities Commission.

SEC. 10. Section 16020 of the Vehicle Code, as amended by Section 4 of Chapter 1126 of the Statutes of 1996, is amended to read:

16020. (a) Every driver and every owner of a motor vehicle shall at all times be able to establish financial responsibility pursuant to Section 16021, and shall at all times carry in the vehicle evidence of the form of financial responsibility in effect for the vehicle.

(b) "Evidence of financial responsibility" means any of the following:

(1) The name of the insurance or surety company that issued a policy or bond for the vehicle that meets the requirements of Section 16056 and is currently in effect, and the number of the insurance policy or surety bond.

(2) If the owner is a self-insurer, as provided in Section 16052 or a depositor, as provided in Section 16054.2, the certificate or deposit number issued by the department.

(3) An insurance covering note, as specified in Section 382 of the Insurance Code.

(4) A showing that the vehicle is owned or leased by, or under the direction of, the United States or any public entity, as defined in Section 811.2 of the Government Code.

(c) For purposes of this section, "evidence of financial responsibility" shall be in writing, and established by writing the name of the insurance company or surety company and the policy number on the vehicle registration card issued by the department.

(d) For purposes of this section, "evidence of financial responsibility" also includes any of the following:

(1) The number of an insurance policy or surety bond that was in effect at the time of the accident, if that information is contained in the vehicle registration records of the department.

(2) The identifying motor carrier of property permit number issued by the department to the motor carrier of property as defined in Section 34601, and displayed on the motor vehicle in the manner specified by the department.

(3) The identifying number issued to the household goods carrier, passenger stage carrier, or transportation charter party carrier by the Public Utilities Commission and displayed on the motor vehicle in the manner specified by the commission.

(4) The identifying number issued by the Interstate Commerce Commission or its successor federal agency, if proof of financial responsibility must be presented to the issuing agency as part of the identification number issuance process, and displayed on the motor vehicle in the manner specified by the issuing agency.

(e) Evidence of financial responsibility does not include any of the identification numbers in paragraph (1), (2), or (3) of subdivision (c) if the carrier is currently suspended by the issuing agency for lack or lapse of insurance or other form of financial responsibility.

(f) This section shall become operative on January 1, 1997.

(g) This section shall remain in effect only until January 1, 2000, or until the date determined by the director pursuant to paragraph (2) of subdivision (a) of Section 1680, whichever is later, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2000, deletes or extends that date.

SEC. 10.5. Section 16020 of the Vehicle Code, as amended by Section 4 of Chapter 1126 of the Statutes of 1996, is amended to read:

16020. (a) Every driver and every owner of a motor vehicle shall at all times be able to establish financial responsibility pursuant to Section 16021, and shall at all times carry in the vehicle evidence of the form of financial responsibility in effect for the vehicle.

(b) "Evidence of financial responsibility" means any of the following:

(1) The name of the insurance or surety company that issued a policy or bond for the vehicle that meets the requirements of Section 16056 and is currently in effect, and the number of the insurance policy or surety bond.

(2) If the owner is a self-insurer, as provided in Section 16052 or a depositor, as provided in Section 16054.2, the certificate of deposit number issued by the department.

(3) An insurance covering note or binder pursuant to Section 382 or 382.5 of the Insurance Code.

(4) A showing that the vehicle is owned or leased by, or under the direction of, the United States or any public entity, as defined in Section 811.2 of the Government Code.

(c) For purposes of this section, "evidence of financial responsibility" shall be in writing, and established by writing the

name of the insurance company or surety company and the policy number on the vehicle registration card issued by the department.

(d) For purposes of this section, "evidence of financial responsibility" also includes any of the following:

(1) The name of the insurance company or surety bond company and the number of an insurance policy or surety bond that was in effect at the time of the accident, if that information is contained in the vehicle registration records of the department.

(2) The identifying symbol issued to a highway carrier by the Department of the California Highway Patrol.

(3) The identifying motor carrier of property permit number issued by the department to the motor carrier of property as defined in Section 34601, and displayed on the motor vehicle in the manner specified by the department.

(4) The identifying number issued to the household goods carrier, passenger stage carrier, or transportation charter party carrier by the Public Utilities Commission and displayed on the motor vehicle in the manner specified by the commission.

(5) The identifying number issued by the Interstate Commerce Commission or its successor federal agency, if proof of financial responsibility must be presented to the issuing agency as part of the identification number issuance process, and displayed on the motor vehicle in the manner specified by the issuing agency.

(e) Evidence of financial responsibility does not include any of the identification numbers in paragraph (1), (2), or (3) of subdivision (c) if the carrier is currently suspended by the issuing agency for lack or lapse of insurance or other form of financial responsibility.

(f) This section shall remain in effect only until January 1, 2003, or until the date determined by the director pursuant to paragraph (2) of subdivision (a) of Section 1680, whichever is later, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2003, deletes or extends that date.

SEC. 11. Section 34505.6 of the Vehicle Code is amended to read:

34505.6. (a) Upon determining that a motor carrier of property who is operating any vehicle described in subdivision (a), (b), (e), (f), (g), or (k) of Section 34500, or any motortruck of two or more axles that is more than 10,000 pounds gross vehicle weight rating, on a public highway, has done either of the following: (1) failed to maintain any vehicle of a type described above in a safe operating condition or to comply with the Vehicle Code or with regulations contained in Title 13 of the California Code of Regulations relative to motor carrier safety, and, in the department's opinion, that failure presents an imminent danger to public safety or constitutes a consistent failure so as to justify a suspension or revocation of the motor carrier's motor carrier permit or (2) failed to enroll all drivers in the pull notice system as required by Section 1808.1, the department shall recommend that the Department of Motor Vehicles suspend or revoke the carrier's motor carrier permit. For

interstate operators, the department shall recommend to the federal Highway Administration Office of Motor Carriers that appropriate administrative action be taken against the carrier. For purposes of this subdivision, two consecutive unsatisfactory compliance ratings for an inspected terminal assigned because the motor carrier failed to comply with the periodic report requirements of Section 1808.1 or the cancellation of the carrier's enrollment by the Department of Motor Vehicles for nonpayment of required fees is a consistent failure. The department shall retain a record, by operator, of every recommendation made pursuant to this section.

(b) Upon determining that a household goods carrier operating any vehicle described in subdivision (a), (b), (e), (f), (g), or (k) of Section 34500 on a public highway has done either of the following: (1) failed to maintain any vehicle used in transportation for compensation in a safe operating condition or to comply with the Vehicle Code or with regulations contained in Title 13 of the California Code of Regulations relative to motor carrier safety, and, in the department's opinion, that failure presents an imminent danger to public safety or constitutes a consistent failure so as to justify a suspension, revocation, or denial of the motor carrier's operating authority or (2) failed to enroll all drivers in the pull notice system as required by Section 1808.1, the department shall recommend that the Public Utilities Commission deny, suspend, or revoke the carrier's operating authority. For interstate operators, the department shall recommend to the Federal Highway Administration Office of Motor Carriers that appropriate administrative action be taken against the carrier. For purposes of this subdivision, two consecutive unsatisfactory compliance ratings for an inspected terminal assigned because the motor carrier failed to comply with the periodic report requirements of Section 1808.1 or the cancellation of the carrier's enrollment by the Department of Motor Vehicles for the nonpayment of required fees is a consistent failure. The department shall retain a record, by operator, of every recommendation made pursuant to this section.

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

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

(2) That the determination may result in a suspension, revocation, or denial of the carrier's motor carrier permit by the Department of Motor Vehicles, suspension, revocation, of the motor carrier's operating authority by the California Public Utilities Commission, or administrative action by the federal Highway Administration Office of Motor Carriers.

(3) That the carrier may request a review of the determination by the department within five days of its receipt of the notice required

under this subdivision. If a review pursuant to this paragraph is requested by the carrier, the department shall conduct and evaluate that review prior to transmitting any notification pursuant to subdivision (a) or (b).

(d) Upon receipt of a written recommendation from the department that a motor carrier permit or operating authority be suspended, revoked, or denied, the Department of Motor Vehicles or Public Utilities Commission, as appropriate, shall, pending a hearing in the matter pursuant to Section 34623 or appropriate Public Utilities Commission authority, suspend the motor carrier permit or operating authority. The written recommendation shall specifically indicate compliance with subdivision (c).

SEC. 12. Section 34505.10 is added to the Vehicle Code, to read:

34505.10. Motor carriers who contract or subcontract transportation service for other motor carriers shall retain all required records relating to the dispatch of vehicles and drivers and the pay of drivers that are not required to be retained by the carrier for whom the contracted or subcontracted service is performed.

SEC. 13. Section 34507.5 of the Vehicle Code is amended to read:

34507.5. (a) Every motor carrier, as defined in Section 408, and every motor carrier of property, and for-hire motor carrier of property, as defined in Section 34601, shall obtain a carrier identification number from the department. Application for a carrier identification number shall be on forms furnished by the department. Information provided in connection with applications for carrier identification numbers shall be updated by motor carriers upon request from the department.

(b) The carrier identification number assigned to the motor carrier under whose operating authority or motor carrier permit the vehicle or combination of vehicles is being operated shall be displayed on both sides of each vehicle, or on both sides of at least one motor vehicle in each combination of the following vehicles while engaged in intrastate commerce:

(1) Each vehicle set forth in Section 34500.

(2) Any motortruck of two or more axles that is more than 10,000 pounds gross vehicle weight rating.

(3) Any other motortruck or motor vehicle used to transport property for compensation.

(c) This section does not apply to any of the following vehicles:

(1) Vehicles described in subdivision (f) of Section 34500, which are operated by a private carrier as defined in subdivision (d) of Section 34601, if the gross vehicle weight rating of the towing vehicle is 11,500 pounds or less.

(2) Vehicles described in subdivision (g) of Section 34500, which are operated by a private carrier as defined in subdivision (d) of Section 34601, if the hazardous material transportation does not require the display of placards pursuant to Section 27903, a license

pursuant to Section 32000.5, or hazardous waste hauler registration pursuant to Section 25163 of the Health and Safety Code.

(3) Historical vehicles, as described in Section 5004, vehicles which display special identification plates in accordance with Section 5011.

(4) Implements of husbandry as defined in Chapter 1 (commencing with Section 36000) of Division 16.

(5) Vehicles owned or operated by an agency of the federal government.

(d) Subdivision (b) does not apply to the following:

(1) Vehicles that display a valid operating authority or identification number assigned by the former Interstate Commerce Commission, or the Federal Highway Administration, of the United States Department of Transportation.

(2) Vehicles that are regulated by, and that display a valid operating authority number issued by, the Public Utilities Commission, including household goods carriers as defined in Section 5109 of the Public Utilities Code.

(3) For-hire motor carriers of passengers.

(e) The display of the carrier identification number shall be in sharp contrast to the background, and shall be of a size, shape, and color that it is readily legible during daylight hours from a distance of 50 feet.

(f) The carrier identification number for companies no longer in business, no longer operating with the same name, or no longer operating under the same operating authority, identification number, or motor carrier permit shall be removed before sale, transfer, or other disposal of any vehicle marked pursuant to this section.

SEC. 14. Section 34601 of the Vehicle Code is amended to read:

34601. (a) As used in this division, "motor carrier of property" means any person who operates any commercial motor vehicle as defined in subdivision (c). "Motor carrier of property" does not include household goods carriers, as defined in Section 5109 of the Public Utilities Code, persons providing only transportation of passengers, or a passenger stage corporation transporting baggage and express upon a passenger vehicle incidental to the transportation of passengers.

(b) As used in this division, "for-hire motor carrier or property" means a motor carrier of property as defined in subdivision (a) who transports property for compensation.

(c) (1) As used in this division, except as provided in paragraph (2), a commercial motor vehicle is defined as any self-propelled vehicle listed in subdivisions (a), (b), (f), (g), and (k) of Section 34500, any motor truck of two or more axles that is more than 10,000 pounds gross vehicle weight rating, and any other motor vehicle used to transport property for compensation.

(2) "Commercial motor vehicle" does not include vehicles operated by household goods carriers, as defined in Section 5109 of the Public Utilities Code or pickup trucks as defined in Section 471 and two-axle daily rental trucks with gross vehicle weight ratings less than 26,001 pounds when operated in noncommercial use.

(d) For purposes of this chapter, "private carrier" means a motor carrier of property, as defined in subdivision (a), who does not transport any goods or property for compensation.

SEC. 15. Section 34620 of the Vehicle Code is amended to read:

34620. (a) Except as provided in subdivision (b) and Section 34622, no motor carrier of property shall operate a commercial motor vehicle on any public highway in this state unless it has complied with Section 34507.5 and has registered with the department its carrier identification number authorized or assigned thereunder. The department shall issue a motor carrier permit upon the carrier's written request, compliance with Sections 34507.5, 34630, and 34640, and the payment of the fee required by this chapter.

(b) No person shall contract with, or otherwise engage the services of, a motor carrier of property unless that motor carrier holds a valid motor carrier of property permit issued by the department. No motor carrier of property shall contract or subcontract with, or otherwise engage the services of, another motor carrier of property until the contracted motor carrier of property provides certification in the manner prescribed by this section, of compliance with subdivision (a). This certification shall be completed by the contracted motor carrier of property and shall include a provision requiring the contracted motor carrier of property to immediately notify the person to whom they are contracted if the contracted motor carrier of property's permit is suspended or revoked. A copy of the contracted motor carrier of property's permit shall accompany the required certificate. The Department of the California Highway Patrol shall, by regulation, prescribe the format for the certificate and may make available an optional specific form for that purpose. The certificate, or a copy thereof, shall be maintained by each involved party for the duration of the contract or period of service plus two years, and shall be presented for inspection at the location designated by each carrier under Section 34501.10, immediately upon the request of an authorized employee of the Department of the California Highway Patrol.

(c) Motor carriers of property who were in compliance with the insurance requirements of this state on the day prior to the effective date of this section and continue to be in compliance with those requirements may continue to operate until directed by the department to obtain a motor carrier permit as required by subdivision (a). The department shall require all of those carriers to obtain permits pursuant to subdivision (a) on or before December 31, 1998.

SEC. 16. Section 34621 of the Vehicle Code is amended to read:

34621. (a) The fee required by Section 7232 of the Revenue and Taxation Code shall be paid to the department upon initial application for a motor carrier permit and for annual renewal.

(b) Every application for an original or a renewal motor carrier permit shall contain all of the following information:

(1) The full name of the motor carrier; any fictitious name under which it is doing business; address, both physical and mailing; and business telephone number.

(2) Status as individual, partnership, owner-operator, or corporation, and officers of corporation and all partners.

(3) Name, address, and driver's license number of owner-operator.

(4) California carrier number, number of commercial motor vehicles in fleet, interstate or intrastate operations, State Board of Equalization, federal Department of Transportation or Interstate Commerce Commission number, as applicable.

(5) Transporter or not a transporter of hazardous materials or petroleum.

(6) Evidence of financial responsibility.

(7) Evidence of Workman's Compensation coverage, if applicable.

(8) Any other information necessary to enable the department to determine whether the applicant is entitled to a permit.

SEC. 17. Section 34623 of the Vehicle Code is amended to read:

34623. (a) The Department of the California Highway Patrol has exclusive jurisdiction for the regulation of safety of operation of motor carriers of property.

(b) The motor carrier permit of a motor carrier of property may be suspended for failure to either (1) maintain any vehicle of the carrier in a safe operating condition or to comply with this code or with regulations contained in Title 13 of the California Code of Regulations relative to motor carrier safety, if that failure is either a consistent failure or presents an imminent danger to public safety, or (2) enroll all drivers in the pull notice system as required by Section 1808.1. The department may, pending a hearing in the matter pursuant to subdivision (d), suspend a carrier's permit.

(c) A motor carrier whose motor carrier permit is suspended pursuant to subdivision (b) may obtain a reinspection of its terminal and vehicles by the Department of the California Highway Patrol by submitting a written request for reinstatement to the department and paying a reinstatement fee as required by Section 34623.5. The department shall deposit all reinstatement fees collected from motor carriers of property pursuant to this section in the fund. Upon receipt of the fee, the department shall forward a request to the Department of the California Highway Patrol, which shall perform a reinspection within a reasonable time. Following the term of a suspension imposed under Section 34670, the department shall reinstate a carrier's motor carrier permit suspended under subdivision (b) upon notification by

the Department of the California Highway Patrol that the carrier's safety compliance has improved to the satisfaction of the Department of the California Highway Patrol, unless the permit is suspended for another reason or has been revoked.

(d) Whenever the department suspends the permit of any carrier pursuant to subdivision (b), the department shall furnish the carrier with written notice of the suspension and shall provide for a hearing within a reasonable time, not to exceed 21 days, after a written request is filed with the department. At the hearing, the carrier shall show cause why the suspension should not be continued. Following the hearing, the department may terminate the suspension, continue the suspension in effect, or revoke the permit. The department may revoke the permit of any carrier suspended pursuant to subdivision (b) at any time that is 90 days or more after its suspension if the carrier has not filed a written request for a hearing with the department or has failed to submit a request for reinstatement pursuant to subdivision (c).

(e) Notwithstanding any other provision of this code, no hearing shall be provided when the suspension of the motor carrier permit is based solely upon the failure of the motor carrier to maintain satisfactory proof of financial responsibility as required by this code.

(f) No motor carrier of property shall operate a commercial motor vehicle on any public highway in this state during any period its motor carrier of property permit is suspended pursuant to this division.

SEC. 18. Section 34624 of the Vehicle Code is amended to read:

34624. (a) The department shall establish a classification of motor carrier of property known as owner-operators.

(b) As used in this section and in Sections 1808.1 and 34501.12, an owner-operator is a person who meets all of the following requirements:

(1) Holds a class A or class B driver's license or a class C license with a hazardous materials endorsement.

(2) Owns, leases, or otherwise operates not more than one power unit and not more than three towed vehicles.

(3) Is required to obtain a permit as a motor carrier of property by the department under this division.

(c) (1) As used in this section, "power unit" is a motor vehicle described in subdivision (a), (b), (g), (f), or (k) of Section 34500, or a motortruck of two or more axles that is more than 10,000 pounds gross vehicle weight rating, but does not include those vehicles operated by household goods carriers, as defined in Section 5109 of the Public Utilities Code or persons providing transportation of passengers. A "towed vehicle" is a nonmotorized vehicle described in subdivision (d), (e), (f), (g), or (k) of that section.

(2) As used in this section, subdivision (f) of Section 34500 includes only those combinations where the gross vehicle weight rating of the towing vehicle exceeds 11,500 pounds, and subdivision (g) of Section

34500 includes only those vehicles transporting hazardous materials for which the display of placards is required pursuant to Section 27903, a license is required pursuant to Section 32000.5, or for which a hazardous waste transporter registration is required pursuant to Section 25163 of the Health and Safety Code.

(d) The department, upon suspending or revoking the driving privilege of an owner-operator shall also suspend the owner-operator's motor carrier permit, unless the owner-operator, within 15 days, shows good cause why the permit should not be suspended.

(e) This section shall not be construed to change the definition of "employer," "employee," or "independent contractor" for any other purpose.

SEC. 19. Section 34631 of the Vehicle Code is amended to read:

34631. The proof of financial responsibility required under Section 34630 shall be evidenced by the deposit with the department, covering each vehicle used or to be used under the motor carrier permit applied for, of one of the following:

(a) A certificate of insurance, issued by a company licensed to write insurance in this state, or by a nonadmitted insurer subject to Section 1763 of the Insurance Code, if the policies represented by the certificate comply with Section 34630 and the rules promulgated by the department pursuant to Section 34604.

(b) A bond of a surety company licensed to write surety bonds in the state.

(c) Evidence of qualification of the carrier as a self-insurer as provided for in subdivision (a) of Section 34630. However, any certificate of self-insurance granted to a motor carrier of property shall be limited to serve as proof of financial responsibility under paragraphs (1) and (2) of subdivision (a) of Section 34631.5 minimum limits only and shall not be acceptable as proof of financial responsibility for the coverage required pursuant to paragraph (3) or (4) of subdivision (a) of Section 34631.5.

SEC. 20. Section 34631.5 of the Vehicle Code is amended to read:

34631.5. (a) (1) Every motor carrier of property as defined in Section 34601, except those subject to paragraph (2), (3), or (4), shall provide and thereafter continue in effect adequate protection against liability imposed by law upon those carriers for the payment of damages in the amount of a combined single limit of not less than seven hundred fifty thousand dollars ($750,000) on account of bodily injuries to, or death of, one or more persons, or damage to or destruction of, property other than property being transported by the carrier for any shipper or consignee whether the property of one or more than one claimant in any one accident.

(2) Every motor carrier of property, as defined in Section 34601, who operates only vehicles under 10,000 pounds gross vehicle weight rating (GVWR) and who does not transport any commodity subject to paragraph (3) or (4), shall provide and thereafter continue in

effect adequate protection against liability imposed by law for the payment of damages caused by bodily injuries to or the death of any person; or for damage to or destruction of property of others, other than property being transported by the carrier, in an amount not less than three hundred thousand dollars ($300,000).

(3) Every intrastate motor carrier of property, as defined in Section 34601, who transports petroleum products in bulk, including waste petroleum and waste petroleum products, shall provide and thereafter continue in effect adequate protection against liability imposed by law upon the carrier for the payment of damages for personal bodily injuries (including death resulting therefrom) in the amount of not less than five hundred thousand dollars ($500,000) on account of bodily injuries to, or death of, one person; and protection against a total liability of those carriers on account of bodily injuries to, or death of more than one person as a result of any one accident, but subject to the same limitation for each person in the amount of not less than one million dollars ($1,000,000); and protection in an amount of not less than two hundred thousand dollars ($200,000) for one accident resulting in damage to or destruction to property other than property being transported by the carrier for any shipper or consignee, whether the property of one or more than one claimant; or a combined single limit in the amount of not less than one million two hundred thousand dollars ($1,200,000) on account of bodily injuries to, or death of, one or more person or damage to or destruction of property, or both, other than property being transported by the carrier for any shipper or consignee whether the property of one or more than one claimant in any one accident.

(4) Except as provided in paragraph (3), every motor carrier of property, as defined in Section 34601, that transports any hazardous material, as defined by Section 353, shall provide and thereafter continue in effect adequate protection against liability imposed by law on those carriers for the payment of damages for personal injury or death, and damage to or destruction of property, in amounts of not less than the minimum levels of financial responsibility specified for carriers of hazardous materials by the United States Department of Transportation in Part 387 (commencing with Section 387.1) of Title 49 of the Code of Federal Regulations. The applicable minimum levels of financial responsibility required are as follows:

Commodity Transported:	Combined Single Limit Coverage
(a) Oil listed in Section 172.101 of Title 49 of the Code of Federal Regulations; hazardous waste, hazardous materials and hazardous substances defined in Section 171.8 of Title 49 of the Code of Federal Regulations and listed in Section 172.101 of Title 49 of the Code of Federal Regulations, but not mentioned in (c) or (d).	$1,000,000
(b) Hazardous waste as defined in Section 25117 of the Health and Safety Code and in Article 1 (commencing with Section 66261.1) of Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations, but not mentioned in (c) or (d).	$1,000,000
(c) Hazardous substances, as defined in Section 171.8 of Title 49 of the Code of Federal Regulations, or liquefied compressed gas or compressed gas, transported in cargo tanks, portable tanks, or hopper-type vehicle with capacities in excess of 3,500 water gallons.	$5,000,000
(d) Any quantity of class A or B explosives; any quantity of poison gas (Poison A); or highway route controlled quantity radioactive materials as defined in Section 173.403 of Title 49 of the Code of Federal Regulations.	$5,000,000

(5) The protection required under paragraphs (1), (2), (3), and (4) shall be evidenced by the deposit with the department, covering each vehicle used or to be used in conducting the service performed by each motor carrier of property, an authorized certificate of public liability and property damage insurance, issued by a company licensed to write the insurance in the State of California, or by a nonadmitted insurer subject to Section 1763 of the Insurance Code.

(6) The protection required under paragraphs (1), (2), (3), and (4) by every motor carrier of property engaged in interstate or foreign transportation of property in or through California, shall be evidenced by the filing and acceptance of a department authorized certificate of insurance, or qualification as a self-insurer as may be authorized by law.

(7) A certificate of insurance, evidencing the protection, shall not be cancelable on less than 30 days' written notice to the department, the notice to commence to run from the date notice is actually received at the office of the department in Sacramento.

(8) Every insurance certificate or equivalent protection to the public shall contain a provision that the certificate or equivalent protection shall remain in full force and effect until canceled in the manner provided by paragraph (7).

(9) Upon cancellation of an insurance certificate or the cancellation of equivalent protection authorized by the Department of Motor Vehicles, the motor carrier permit of any motor carrier of property, shall stand suspended immediately upon the effective date of the cancellations.

(10) No carrier shall engage in any operation on any public highway of this state during the suspension of its permit.

(11) No motor carrier of property, whose permit has been suspended under paragraph (9) shall resume operations unless and until the carrier has filed an insurance certificate or equivalent protection in effect at the time and that meets the standards set forth in this section. The operative rights of the complying carriers shall be reinstated from suspension upon the filing of an insurance certificate or equivalent protection.

(12) In order to expedite the processing insurance filings by the department, each insurance filing made should contain the insured's California carrier number, if known, in the upper right corner of the certificate.

SEC. 21. Section 34650 of the Vehicle Code is repealed.

SEC. 22. Section 34660 of the Vehicle Code is amended to read:

34660. (a) A motor carrier of property, after its motor carrier permit has been suspended by the department, who continues to operate as a motor carrier, either independently or for another motor carrier, is guilty of a misdemeanor, punishable by a fine of not more than two thousand five hundred dollars ($2,500), or by imprisonment in the county jail for not more than three months, or by both that fine and imprisonment.

(b) Each violation of this section is a separate and distinct offense, and, in the case of a continuing violation, each day's continuance of operation as a carrier in violation of this section is a separate and distinct offense.

(c) Upon finding that a motor carrier of property is willfully violating this section after being advised that it is not operating in compliance with the laws of this state, the court may issue an injunction to stop the carrier's continued operation.

(d) A member of the Department of the California Highway Patrol may impound a vehicle or combination of vehicles operated by a motor carrier of property, when the vehicle or combination of vehicles is found upon a highway, any public lands, or an offstreet parking facility and the motor carrier is found to be in violation of this

section or of subdivision (a) of Section 34620. For purposes of this subdivision, the vehicle shall be released to the registered owner or authorized agent only after the registered owner or authorized agent furnishes the Department of the California Highway Patrol with proof of current registration, a currently valid driver's license of the appropriate class to operate the vehicle or combination of vehicles, and proof of compliance with this division. The registered owner or authorized agent is responsible for all towing and storage charges related to the impoundment.

SEC. 23. Section 34670 of the Vehicle Code is amended to read:

34670. Any violation of Division 14.8 (commencing with Section 34500) or any violation that results in a suspension or revocation of the motor carrier permit pursuant to Section 34505.6 or 34623, or subdivision (d) of Section 34624, in addition to any other penalties, shall be sanctioned as follows:

(a) If there have been no prior sanctions imposed on the permitholder, the permit shall be suspended for 30 days.

(b) If the permit had been suspended once prior in the previous 36 months, the permit shall be suspended for 60 days.

(c) If the permit had been previously suspended two or more times in the previous 36 months, the permit shall be suspended for 90 days, and a fine of one thousand five hundred dollars ($1,500) shall be imposed.

SEC. 24. Section 10.5 of this bill incorporates amendments to Section 16020 of the Vehicle Code proposed by both this bill and AB 651. 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 16020 of the Vehicle Code, and (3) this bill is enacted after AB 651, in which case Section 10 of this bill shall not become operative.

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 653

An act to repeal Section 1326 of the Code of Civil Procedure, and to amend Section 16302.1 of, to add Sections 16301.6, 16301.7, and 16301.8 to, and to repeal Sections 13940, 13941, 13942, 13943, 13943.1, and 13943.2 of, the Government Code, relating to state government.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 1326 of the Code of Civil Procedure is repealed.

SEC. 2. Section 13940 of the Government Code is repealed.

SEC. 3. Section 13941 of the Government Code is repealed.

SEC. 4. Section 13942 of the Government Code is repealed.

SEC. 5. Section 13943 of the Government Code is repealed.

SEC. 6. Section 13943.1 of the Government Code is repealed.

SEC. 7. Section 13943.2 of the Government Code is repealed.

SEC. 8. Section 16301.6 is added to the Government Code, to read:

16301.6. (a) Any state agency or employee required to collect any state taxes, licenses, fees, or money owing to the state for any reason that is due and payable may be discharged by the Controller from accountability for the collection of the taxes, licenses, fees, or money if the debt is uncollectible or the amount of the debt does not justify the cost of its collection.

(b) The application for a discharge under this section shall be filed with the Controller and includes all of the following:

(1) A statement of the nature and amount of the tax, license, fee, or other money due.

(2) The names of the persons liable.

(3) The estimated cost of collection.

(4) All other facts warranting the discharge, unless the Controller determines that the circumstances do not warrant the furnishing of detailed information.

(c) The Controller shall audit the applications and discharge the applicant from further accountability for collection and authorize the applicant to close its books on that item if the Controller determines all of the following:

(1) The matters contained in the application are correct.

(2) No credit exists against which the debt can be offset.

(3) Collection is improbable for any reason.

(4) The cost of recovery does not justify the collection.

(5) For items that exceed the monetary jurisdiction of the small claims court, the Attorney General has advised, in writing, that collection is not justified by the cost or is improbable for any reason.

SEC. 9. Section 16301.7 is added to the Government Code, to read:

16301.7. A discharge of a state agency or employee pursuant to Section 16301.6 does not release any person from the payment of any tax, license, fee, or other money that is due and owing to the state.

SEC. 10. Section 16301.8 is added to the Government Code, to read:

16301.8. In addition to a discharge from accountability pursuant to Section 16301.6, a state agency is not required to collect taxes, licenses, fees, or money owed to the state if the amount to be collected is two hundred fifty dollars ($250) or less and the amount owed to the state is uncollectible or does not justify the cost of collection. This authority may be revoked by the Controller if he or she finds that the agency abused its discretion to refrain from collecting taxes, licenses, fees, or money owed to the state. Nothing contained in this section shall be construed as releasing any person from the payment of any money due the state.

SEC. 11. Section 16302.1 of the Government Code is amended to read:

16302.1. Whenever any person pays to any state agency pursuant to law an amount covering taxes, penalties, interest, license or other fees, or any other payment, and it is subsequently determined by the state agency responsible for the collection thereof that this amount includes an overpayment of ten dollars ($10) or less of the amount due the state pursuant to the assessment, levy, or charge to which the payment is applicable, the amount of the overpayment may be disposed of in either of the following ways:

(1) The state agency responsible for the collection to which the overpayment relates may apply the amount of the overpayment as a payment by the person on any other taxes, penalties, interest, license or other fees, or any other amount due the state from that person if the state agency is responsible by law for the collection to which the overpayment is to be applied as a payment.

(2) Upon written request of the state agency responsible for the collection to which the overpayment relates, the amount of the overpayment shall, on order of the Controller, be deposited as revenue in the fund in the State Treasury into which the collection, exclusive of overpayments, is required by law to be deposited.

The Controller may adopt rules and regulations to permit state agencies to retain these overpayments where a demand for refund permitted by law is not made within six months after the refund becomes due; and the retained overpayments shall belong to the state.

Except as provided in the foregoing paragraph, this section shall not affect the right of any person making overpayment of any amount to the state to make a claim for refund of the overpayment, nor the

authority of any state agency or official to make payment of any amount so claimed, if otherwise authorized by law.

CHAPTER 654

An act to amend Sections 2076.5, 2111, 2135, 2185, 2290.5, and 2443 of, and to repeal Section 2076 of, the Business and Professions Code, relating to physicians and surgeons, and making an appropriation therefor.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 2076 of the Business and Professions Code is repealed.

SEC. 2. Section 2076.5 of the Business and Professions Code is amended to read:

2076.5. (a) Notwithstanding any other provision of law, a physician and surgeon lawfully practicing medicine in another state or country may be exempted from licensure while practicing medicine in this state under the following conditions:

(1) The physician and surgeon has been invited by the United States Olympic Committee to provide medical services at training sites designated by the olympic training center or to provide medical services at an event in this state sanctioned by the committee.

(2) The United States Olympic Committee certifies to the board the name of the physician and surgeon, the state or country of the applicant's licensure, and the dates within which the applicant has been invited to provide medical services.

(3) The physician and surgeon's practice is limited to that required by the United States Olympic Committee. Those medical services shall be within the area of the physician's and surgeon's competence and shall only be provided to athletes or team personnel registered to train at the olympic training center or registered to compete in an event conducted under the sanction of the United States Olympic Committee.

(b) The exemption provided in this section shall remain in force while the holder is providing medical services at the invitation of the United States Olympic Committee and only during the time certified to the board, but in no event longer than 90 days.

(c) Notwithstanding any other provision of law, the official team manager who is responsible for any team member participating in events at the invitation of the United States Olympic Committee in California may give consent to the furnishing of hospital, medical, and surgical care to a minor who is a team member and that consent

shall not be subject to disaffirmance because of minority. The consent of the parent, or parents, of that person shall not be necessary in order to authorize hospital, medical, and surgical care.

SEC. 3. Section 2111 of the Business and Professions Code is amended to read:

2111. (a) Physicians who are not citizens but who meet the requirements of subdivision (b), are legally admitted to the United States, and who seek postgraduate study in an approved medical school may, after receipt of an appointment from the dean of the medical school and application to and approval by the Division of Licensing, be permitted to participate in the professional activities of the department in the medical school to which they are appointed. The physician shall be under the direction of the head of the department to which he or she is appointed, and shall be known for these purposes as a "Section 2111 guest physician."

(b) (1) Application for approval shall be made on a form prescribed by the division. The application shall show that the person does not immediately qualify for a physician and surgeon certificate under this chapter and that the person has completed at least three years of postgraduate basic residency requirements.

(2) Approval shall be granted for a maximum of three years and shall be renewed annually. Renewal shall be granted subject to the discretion of the division. Notwithstanding the limitations in this subdivision on the length of the approval, a Section 2111 guest physician may apply for, and the division may in its discretion grant, not more than two extensions of that approval. An extension may be granted only if the dean of the medical school has provided justification that the extension is necessary and the person holds a certificate issued by the Educational Commission for Foreign Medical Graduates.

(c) Except to the extent authorized by this section, the visiting physician may not engage in the practice of medicine, bill for his or her medical services, or otherwise receive compensation therefor. The time spent under appointment in a medical school pursuant to this section may not be used to meet the requirements for licensure under Section 2101 or 2102.

(d) Nothing in this section shall preclude any United States citizen who has received his or her medical degree from a medical school located in a foreign country from participating in any program established pursuant to this section.

SEC. 4. Section 2135 of the Business and Professions Code is amended to read:

2135. The Division of Licensing shall issue a physician and surgeon's certificate to an applicant who meets all of the following requirements:

(a) The applicant holds an unlimited license as a physician and surgeon in another state or states, or in a Canadian province or Canadian provinces, which was issued upon:

(1) Successful completion of a resident course of professional instruction equivalent to that specified in Section 2089.

(2) Taking and passing a written examination that is recognized by the division to be equivalent in content to that administered in California.

(b) The applicant has held an unrestricted license to practice medicine, in a state or states, in a Canadian province or Canadian provinces, or as a member of the active military, United States Public Health Services, or other federal program, for a period of at least four years. Any time spent by the applicant in an approved postgraduate training program or clinical fellowship acceptable to the division shall not be included in the calculation of this four-year period.

(c) The division determines that no disciplinary action has been taken against the applicant by any medical licensing authority and that the applicant has not been the subject of adverse judgments or settlements resulting from the practice of medicine which the division determines constitutes evidence of a pattern of negligence or incompetence.

(d) The applicant takes and passes the clinical competency written examination administered by the division or takes and passes in another state, commonwealth, or territory of the United States, an examination which is recognized by the division to be equivalent to that administered in this state. However, this subdivision shall not apply to a graduate of a medical school approved by the division.

(e) The applicant takes and passes an oral examination administered by the division.

(f) The applicant has not committed any acts or crimes constituting grounds for denial of a certificate under Division 1.5 (commencing with Section 475) or Article 12 (commencing with Section 2220).

(g) Any application received from an applicant who has held an unrestricted license to practice medicine, in a state or states, or Canadian province or Canadian provinces, or as a member of the active military, United States Public Health Services, or other federal program for four or more years shall be reviewed and processed pursuant to this section. Any time spent by the applicant in an approved postgraduate training program or clinical fellowship acceptable to the division shall not be included in the calculation of this four-year period. This subdivision does not apply to applications which may be reviewed and processed pursuant to Section 2151.

SEC. 5. Section 2185 of the Business and Professions Code is amended to read:

2185. Notwithstanding Section 135, an applicant for examination who fails to pass the oral examination or any part or parts of the written examination after two attempts shall not be eligible to be reexamined in the oral examination or in that part or parts of the written examination until the applicant presents evidence satisfactory to the division that he or she has completed additional

appropriate medical instruction satisfactory to the division in a program conducted under the auspices of a medical school or an approved postgraduate training program. A failure of any part of the written examination administered in another state shall be considered a failure of that part for purposes of this section, if the division finds that the written examination administered in the other state is the same examination as that administered by the division under this chapter.

SEC. 6. Section 2290.5 of the Business and Professions Code is amended to read:

2290.5. (a) For the purposes of this section, "telemedicine" means the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications.

(b) For the purposes of this section, "health care practitioner" has the same meaning as "licentiate" as defined in paragraph (2) of subdivision (a) of Section 805.

(c) Prior to the delivery of health care via telemedicine, the health care practitioner who has ultimate authority over the care or primary diagnosis of the patient shall obtain verbal and written informed consent from the patient. The informed consent procedure shall ensure that at least all of the following information is given to the patient verbally and in writing:

(1) The individual retains the option to withhold or withdraw consent at any time without affecting the right to future care or treatment nor risking the loss or withdrawal of any program benefits to which the individual would otherwise be entitled.

(2) A description of the potential risks, consequences, and benefits of telemedicine.

(3) All existing confidentiality protections apply.

(4) Patient access to all medical information transmitted during a telemedicine consultation is guaranteed, and copies of this information are available for a reasonable fee.

(5) Dissemination of any patient identifiable images or information from the telemedicine interaction to researchers or other entities shall not occur without the consent of the patient.

(d) A patient shall sign a written statement prior to the delivery of health care via telemedicine, indicating that the patient understands the written information provided pursuant to subdivision (a), and that this information has been discussed with the health care practitioner, or his or her designee.

(e) The written consent statement signed by the patient shall become part of the patient's medical record.

(f) The failure of a health care practitioner to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.

(g) Where the patient is a minor, or is incapacitated or mentally incompetent such that he or she is unable to give informed consent, this section shall apply to the patient's representative.

(h) Except as provided in paragraph (3) of subdivision (c), this section shall not apply when the patient is not directly involved in the telemedicine interaction, for example when one health care practitioner consults with another health care practitioner.

(i) This section shall not apply in an emergency situation in which a patient is unable to give informed consent and the representative of that patient is not available.

(j) This section shall not apply to a patient under the jurisdiction of the Department of Corrections.

(k) This section shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

SEC. 6.5. Section 2290.5 of the Business and Professions Code is amended to read:

2290.5. (a) For the purposes of this section, "telemedicine" means the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications. Neither a telephone conversation nor an electronic mail message between a health care practitioner and patient constitutes "telemedicine" for purposes of this section.

(b) For the purposes of this section, "health care practitioner" has the same meaning as "licentiate" as defined in paragraph (2) of subdivision (a) of Section 805.

(c) Prior to the delivery of health care via telemedicine, the health care practitioner who has ultimate authority over the care or primary diagnosis of the patient shall obtain verbal and written informed consent from the patient or the patient's legal representative. The informed consent procedure shall ensure that at least all of the following information is given to the patient or the patient's legal representative verbally and in writing:

(1) The patient or the patient's legal representative retains the option to withhold or withdraw consent at any time without affecting the right to future care or treatment nor risking the loss or withdrawal of any program benefits to which the patient or the patient's legal representative would otherwise be entitled.

(2) A description of the potential risks, consequences, and benefits of telemedicine.

(3) All existing confidentiality protections apply.

(4) All existing laws regarding patient access to medical information and copies of medical records apply.

(5) Dissemination of any patient identifiable images or information from the telemedicine interaction to researchers or other entities shall not occur without the consent of the patient.

(d) A patient or the patient's legal representative shall sign a written statement prior to the delivery of health care via telemedicine, indicating that the patient or the patient's legal representative understands the written information provided pursuant to subdivision (a), and that this information has been discussed with the health care practitioner, or his or her designee.

(e) The written consent statement signed by the patient or the patient's legal representative shall become part of the patient's medical record.

(f) The failure of a health care practitioner to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.

(g) All existing laws regarding surrogate decisionmaking shall apply. For purposes of this section, "surrogate decisionmaking" means any decision made in the practice of medicine by a parent or legal representative for a minor or an incapacitated or incompetent individual.

(h) Except as provided in paragraph (3) of subdivision (c), this section shall not apply when the patient is not directly involved in the telemedicine interaction, for example when one health care practitioner consults with another health care practitioner.

(i) This section shall not apply in an emergency situation in which a patient is unable to give informed consent and the representative of that patient is not available in a timely manner.

(j) This section shall not apply to a patient under the jurisdiction of the Department of Corrections or any other correctional facility.

(k) This section shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

SEC. 7. Section 2443 of the Business and Professions Code is amended to read:

2443. The following fees apply to fictitious-name permits issued under Section 2415:

(a) The initial permit fee shall be fifty dollars ($50). If the permit will expire less than one year after its issuance, then the initial permit fee is an amount equal to 50 percent of the fee in effect at the beginning of the current renewal cycle.

(b) The biennial renewal fee shall be forty dollars ($40).

(c) The delinquency fee is twenty dollars ($20).

(d) The duplicate permit fee shall not exceed the cost of processing up to a maximum of fifty dollars ($50).

SEC. 8. Section 6.5 of this bill incorporates amendments to Section 2290.5 of the Business and Professions Code proposed by both this bill and SB 922. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1998, (2) each bill amends Section 2290.5 of the Business and Professions Code, and (3)

this bill is enacted after SB 922, in which case Section 6 of this bill shall not become operative.

CHAPTER 655

An act to amend Section 2483 of, and to repeal and add Section 2497.1 of, the Business and Professions Code, relating to podiatric medicine.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 2483 of the Business and Professions Code is amended to read:

2483. (a) Each applicant for a certificate to practice podiatric medicine shall show by official transcript or other official evidence satisfactory to the board that he or she has successfully completed a medical curriculum extending over a period of at least four academic years in a college or school of podiatric medicine approved by the board. The total number of hours of all courses shall consist of a minimum of 4,000 hours.

The board, by regulation, shall adopt standards for determining equivalent training authorized by this section.

(b) The curriculum for all applicants shall provide for adequate instruction related to podiatric medicine in the following:

Alcoholism and other chemical substance detection
Local anesthesia
Anatomy, including embryology, histology, and neuroanatomy
Bacteriology
Behavioral science
Biochemistry
Biomechanics-foot and ankle
Child abuse detection
Dermatology
Didactic podiatry
Geriatric medicine
Human sexuality
Pediatrics
Neurology
Pathology, microbiology, and immunology
Pharmacology, including materia medica and toxicology
Physical and laboratory diagnosis
Physical medicine
Physiology
Podiatric medicine

Podiatric surgery
Preventive medicine, including nutrition
Psychiatric problem detection
Psychiatry
Radiology and radiation safety
Spousal or partner abuse detection
Orthopedic surgery
Therapeutics
Women's health

(c) This section shall become operative on January 1, 2000.

SEC. 2. Section 2497.1 of the Business and Professions Code is repealed.

SEC. 3. Section 2497.1 is added to the Business and Professions Code, to read:

2497.1. The board shall establish and administer a diversion program for doctors of podiatric medicine in accordance with Article 14 (commencing with Section 2340).

CHAPTER 656

An act to repeal Chapter 23 (commencing with Section 17770) of, and to add and repeal Chapter 19 (commencing with Section 17200) of , Part 10 of, the Education Code, relating to class size in the public elementary schools, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Chapter 19 (commencing with Section 17200) is added to Part 10 of the Education Code, to read:

CHAPTER 19. CLASS SIZE REDUCTION FACILITIES FUNDING

17200. There is hereby established the Class Size Reduction Facilities Funding Program, for the purpose of assisting school districts with the facilities-related costs associated with reducing class size in kindergarten and grades 1 to 3, inclusive, pursuant to Chapter 6.10 (commencing with Section 52120) of Part 28. For the purposes of this chapter, any reference to school districts shall be deemed to include charter schools.

17201. (a) The Legislature finds and declares that the reduction of class size in the early primary grades leads to significant and sustained improvement in the academic achievement levels of pupils. In enacting the Class Size Reduction Program pursuant to

Chapter 6.10 (commencing with Section 52120) of Part 28, the Legislature is seeking an orderly and efficient transition to smaller class sizes in the 1996–97 school year. Accordingly, the Legislature has allowed school districts to delay implementation of a class size reduction program in the respective districts until February 16, 1997, but receive operational funding pursuant to Section 52126 as if the program had operated for the entire 1996–97 school year.

(b) The Legislature further finds and declares that the first priority for expenditure of the accrued savings in operational funding due to the delayed implementation date in the 1996–97 school year shall be for facilities-related costs of class size reduction.

(c) The Legislature further finds and declares that the eligibility of a school district under the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 12 (commencing with Section 17000)) shall not be affected by the provisions of this chapter.

17202. An application for funding under this chapter, the form of which shall be developed by the Superintendent of Public Instruction by August 1, 1996, shall be submitted by each school district that elects to apply for funding under this chapter to the Superintendent of Public Instruction by October 1, 1996, and shall include the following certifications by the governing board of the school district:

(a) Certification of the number of new classes that will be established by the school district solely for the purpose of reducing class size in grade 1 pursuant to the Class Size Reduction Program contained in Chapter 6.10 (commencing with Section 52120) of Part 28.

(b) Certification of the number of new classes that will be established by the school district solely for the purpose of reducing class size in grade 2 pursuant to the Class Size Reduction Program contained in Chapter 6.10 (commencing with Section 52120) of Part 28.

(c) Certification of the number of new classes that will be established by the school district solely for the purpose of reducing class size in kindergarten or grade 3 pursuant to the Class Size Reduction Program contained in Chapter 6.10 (commencing with Section 52120) of Part 28.

(d) Certification that, for the grades in which class sizes are to be reduced, the school district can show either of the following:

(1) The school district is qualified as of the date of the application for new construction funding under the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 12 (commencing with Section 17000)) on a districtwide basis or for the relevant school attendance area, as defined in Section 17041.

(2) The school district has insufficient space to house all the new classes that need to be established in order for the district to participate in the Class Size Reduction Program contained in Chapter 6.10 (commencing with Section 52120) of Part 28, as

demonstrated through the eligibility calculation specified in Section 17203 that shall be certified by the governing board of the school district.

17203. Any school district that seeks to qualify for funding under this chapter and that does not currently qualify for new construction funding under the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 12 (commencing with Section 17000)) shall complete the following calculations either on a districtwide basis or on the basis of each attendance area, as defined in Section 17041, to demonstrate eligibility for funding under this chapter:

(a) Identify by grade level all available teaching stations in the schools in the school district that serve kindergarten or any of grades 1 to 8, inclusive. For the purposes of this section, "teaching station" shall be determined as specified in Sections 17042.5 and 17042.7.

(b) Determine the number of teaching stations available for class size reduction by calculating the number of pupils that may be housed in existing teaching stations, utilizing the loading standards established by the State Allocation Board or the district loading standards pursuant to paragraph (2) of subdivision (a) of Section 17042.7. For the purposes of this calculation, a school district may utilize any of the following:

(1) The current number of pupils in the school district.

(2) The projected number of pupils, as determined under the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 12 (commencing with Section 17000)).

(3) The projected number of pupils, as determined under the Emergency School Classroom Law of 1979 (Chapter 14 (commencing with Section 17085)).

17204. (a) If, pursuant to the calculations made pursuant to subdivision (b) of Section 17203, the school district has no available teaching stations for the additional classes created by its class size reduction program, the school district shall qualify for funding pursuant to this chapter for each additional teaching station that needs to be established to reduce class size to not more than 20 pupils pursuant to Chapter 6.10 (commencing with Section 52120) of Part 28.

(b) If, pursuant to the calculations made pursuant to subdivision (b) of Section 17203, the school district has an insufficient number of teaching stations available for its class size reduction program, the school district shall qualify for funding available under this chapter only for each additional teaching station that needs to be established to reduce class size to not more than 20 pupils pursuant to Chapter 6.10 (commencing with Section 52120) of Part 28 that reasonably cannot be housed in available teaching stations.

(c) If, pursuant to the calculations made pursuant to subdivision (b) of Section 17203, the school district has no need for additional teaching stations in order to implement its class size reduction

program to not more than 20 pupils pursuant to Chapter 6.10 (commencing with Section 52120) of Part 28, the school district shall not qualify for funding under this chapter.

17205. (a) From the sum appropriated for the purposes of this chapter, the Superintendent of Public Instruction shall apportion to each applicant school district the sum of twenty-five thousand dollars ($25,000) for each additional teaching station that needs to be established for the purposes of class size reduction that cannot be housed in existing teaching stations, as determined pursuant to this chapter.

(b) (1) If the funds appropriated for the purposes of this chapter are insufficient to fund all applicant school districts pursuant to this chapter, the Superintendent of Public Instruction shall first apportion funds for all applications from school districts related to reducing class size in grade 1. If funds are insufficient to fund all applications related to reducing class size in grade 1, the Superintendent of Public Instruction shall apportion to each applicant school district its pro rata share of funding for all new grade 1 teaching stations that need to be established for the purpose of class size reduction. In determining the pro rata share for each school district the Superintendent of Public Instruction shall round to the nearest twenty-five thousand dollar ($25,000) increment, but no qualifying school district shall receive less than twenty-five thousand dollars ($25,000).

(2) If funds remain available after funding all applications related to reducing class size in grade 1, the Superintendent of Public Instruction shall next apportion funds for all applications related to reducing class size in grade 2. If funds are insufficient to fund all applications related to reducing class size in grade 2, the Superintendent of Public Instruction shall apportion to each applicant school district its pro rata share of funding for all new grade 2 teaching stations that need to be established for the purpose of class size reduction. In determining the pro rata share for each school district the Superintendent of Public Instruction shall round to the nearest twenty-five thousand dollar ($25,000) increment, but no qualifying school district shall receive less than twenty-five thousand dollars ($25,000).

(3) If funds remain available after funding all applications related to reducing class size in grades 1 and 2, the Superintendent of Public Instruction shall then apportion funds for applications related to reducing class size in kindergarten or grade 3. If funds are insufficient to fund all applications related to reducing class size in kindergarten or grade 3, the Superintendent of Public Instruction shall apportion to each applicant school district its pro rata share of funding for all new kindergarten or grade 3 teaching stations that need to be established for the purpose of class size reduction. In determining the pro rata share for each school district the Superintendent of Public Instruction shall round to the nearest twenty-five thousand dollar

($25,000) increment, but no qualifying school district shall receive less than twenty-five thousand dollars ($25,000).

17205.5. The amount apportioned for each additional teaching station pursuant to Section 17205 shall be increased by 15 percent for teaching stations located at schoolsites for which the governing board of the school district certifies that the funds will be used for portable classrooms and for which the Superintendent of Public Instruction determines that those schoolsites require portable classrooms specially designed to accommodate a snow load.

17206. (a) Funds allocated to school districts pursuant to this chapter shall be expended solely for the purpose of facilities-related costs associated with the implementation of the Class Size Reduction Program contained in Chapter 6.10 (commencing with Section 52120) of Part 28.

(b) Funds shall not be allocated to school districts pursuant to this chapter for the purpose of assisting school districts in implementing Option Two, as set forth in paragraph (2) of subdivision (b) of Section 52122.

(c) Funds shall not be allocated to a school district pursuant to this chapter if the school district fails to submit to the Superintendent of Public Instruction an application for funds by November 1, 1996, pursuant to the Class Size Reduction Program contained in Chapter 6.10 (commencing with Section 52120) of Part 28.

(d) If a school district receives funding pursuant to this chapter but has not implemented its class size reduction program for all grades and classes for which it received funding pursuant to this chapter, the Superintendent of Public Instruction shall notify the Controller and the school district in writing and the Controller shall deduct an amount equal to the amount received by the school district under this chapter for each class that the school district failed to reduce to a class size of 20 or less pupils from the school district's next principal apportionment or apportionments of state funds to the district, other than basic aid apportionments required by Section 6 of Article IX of the California Constitution.

17207. This chapter shall become inoperative on June 30, 1999, and as of January 1, 2000, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2000, deletes or extends the dates on which the chapter becomes inoperative and is repealed.

SEC. 2. Chapter 23 (commencing with Section 17770) of Part 10 of the Education Code is repealed.

SEC. 3. (a) The Superintendent of Public Instruction shall certify to the Controller the amount of funds appropriated pursuant to Section 6 of Chapter 163 of the Statutes of 1996 that shall not be allocated by the Superintendent of Public Instruction to school districts in the 1996–97 fiscal year for the purposes of the Class Size Reduction Program established pursuant to Chapter 6.10 (commencing with Section 52120) of Part 28 of the Education Code.

(b) Any funds appropriated pursuant to Section 6 of Chapter 163 of the Statutes of 1996 that shall not be allocated by the Superintendent of Public Instruction to school districts in the 1996–97 fiscal year for the purposes of the Class Size Reduction Program established pursuant to Chapter 6.10 (commencing with Section 52120) of Part 28 of the Education Code are hereby reappropriated, without regard to fiscal year, to the Superintendent of Public Instruction for allocation to school districts for the purposes of the Class Size Reduction Facilities Funding Program contained in Chapter 23 (commencing with Section 17770) of Part 10 of the Education Code, as that chapter existed on June 30, 1997.

(c) To be eligible to receive any of the funds reappropriated pursuant to this section, a school district shall already have an existing application on file with the Superintendent of Public Instruction pursuant to Section 17772 of the Education Code, or shall, by a date specified by the Superintendent of Public Instruction, file a new or amended application in accordance with Chapter 23 (commencing with Section 17770) of Part 10 of the Education Code, as that chapter existed on June 30, 1997, except that the October 1, 1996, application deadline specified in Section 17772 of the Education Code does not apply. A new or amended application filed pursuant to this subdivision shall be only for new classes established during the 1996–97 fiscal year pursuant to Chapter 6.10 (commencing with Section 52120) of Part 28 of the Education Code.

(d) Notwithstanding subdivision (b) of Section 17205 of the Education Code, the Superintendent of Public Instruction shall apportion to applicant school districts the funds reappropriated pursuant to this section as follows:

(1) If the funds reappropriated for the purposes of this section are insufficient to fund all applicant school districts pursuant to this section, the Superintendent of Public Instruction shall first apportion funds for all existing, amended, and new applications from school districts related to reducing class size in grade 1. If funds are insufficient to fund all existing, amended, and new applications related to reducing class size in grade 1, the Superintendent of Public Instruction shall apportion to each applicant school district its pro rata share of funding for all new grade 1 teaching stations that need to be established for the purpose of class size reduction. In determining the pro rata share for each school district the Superintendent of Public Instruction shall round to the nearest twenty-five thousand dollar ($25,000) increment, but no qualifying school district shall receive less than twenty-five thousand dollars ($25,000).

(2) If funds remain available after funding all existing, amended, and new applications related to reducing class size in grade 1, the Superintendent of Public Instruction shall next apportion funds for all existing, amended, and new applications related to reducing class size in grade 2. If funds are insufficient to fund all existing, amended,

and new applications related to reducing class size in grade 2, the Superintendent of Public Instruction shall apportion to each applicant school district its pro rata share of funding for all new grade 2 teaching stations that need to be established for the purpose of class size reduction. In determining the pro rata share for each school district the Superintendent of Public Instruction shall round to the nearest twenty-five thousand dollar ($25,000) increment, but no qualifying school district shall receive less than twenty-five thousand dollars ($25,000).

(3) If funds remain available after funding all existing, amended, and new applications related to reducing class size in grades 1 and 2, the Superintendent of Public Instruction shall then apportion funds for existing applications related to reducing class size in kindergarten or grade 3. If funds are insufficient to fund all existing applications related to reducing class size in kindergarten or grade 3, the Superintendent of Public Instruction shall apportion to each school district that has an existing application on file its pro rata share of funding for all new kindergarten or grade 3 teaching stations that need to be established for the purpose of class size reduction. In determining the pro rata share for each school district the Superintendent of Public Instruction shall round to the nearest twenty-five thousand dollar ($25,000) increment, but no qualifying school district shall receive less than twenty-five thousand dollars ($25,000).

(4) If funds remain available after funding all existing, amended, and new applications related to reducing class size in grades 1 and 2 and all existing applications related to reducing class size in kindergarten or grade 3, the Superintendent of Public Instruction shall then apportion funds for amended and new applications related to reducing class size in kindergarten or grade 3. If funds are insufficient to fund all amended and new applications related to reducing class size in kindergarten or grade 3, the Superintendent of Public Instruction shall apportion to each school district that has filed an amended or new application its pro rata share of funding for all new kindergarten or grade 3 teaching stations that need to be established for the purpose of class size reduction. In determining the pro rata share for each school district the Superintendent of Public Instruction shall round to the nearest twenty-five thousand dollar ($25,000) increment, but no qualifying school district shall receive less than twenty-five thousand dollars ($25,000).

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 continue to implement the Class Size Reduction Facilities Funding Program established pursuant to Chapter 23 (commencing with Section 17770) of Part 10 of the Education Code,

as that chapter existed on June 30, 1997, and to reappropriate funds therefor, it is necessary that this act take effect immediately.

CHAPTER 657

An act to add Sections 130051.20 and 130051.25 to the Public Utilities Code, relating to transportation.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 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 Los Angeles County Metropolitan Transportation Authority has an annual budget of two billion nine hundred million dollars ($2,900,000,000).

(b) The authority is funded by tax and bond revenues.

(c) There were 990 lobbyists registered with the authority as of December 8, 1994, nearly as many lobbyists as there are who work with the Legislature at the State Capitol.

(d) Evidence exists that the policy making and contract-award processes are heavily influenced by lobbyists bearing gifts and contributions.

(e) Public confidence in the authority has deteriorated because of critical investigative media reports on its performance, the temporary suspension of federal construction funding, an ongoing criminal federal investigation, and pending lawsuits filed by authority "whistle-blowers" and bus riders.

(f) It is crucial to the future of the transportation system in Los Angeles County that there be public confidence in the authority, that public funds are spent legally, properly, without special-interest influence, and in the most cost-effective way that serves the greatest number of transit-dependent citizens.

The Legislature finds it proper and necessary therefore, to revise and strengthen existing laws that govern gifts and contributions given to, and received by, authority directors and employees.

SEC. 2. Section 130051.20 is added to the Public Utilities Code, to read:

130051.20. (a) (1) No construction company, engineering firm, consultant, legal firm, or any company, vendor, or business entity seeking a contract with the Los Angeles County Metropolitan Transportation Authority shall give to a member, alternate member, or employee of the authority, or to any member of their immediate families, a contribution of over ten dollars ($10) in value or amount.

A "contribution" includes contributions to candidates or their committees in any federal, state, or local election.

(2) Neither the owner, an employee, or any member of their immediate families, of any construction company, engineering firm, consultant, legal firm, or any company, vendor, or business entity seeking a contract with the authority shall make a contribution of over ten dollars ($10) in value or amount to a member, alternate member, or employee of the authority, or to any member of their immediate families.

(3) No member, alternate member, or employee of the authority, or member of their immediate families, shall accept, solicit, or direct a contribution of over ten dollars ($10) in value or amount from any construction company, engineering firm, consultant, legal firm, or any company, vendor, or business entity seeking a contract with the authority.

(4) No member, alternate member, or employee of the authority shall make or participate in, or use his or her official position to influence, a contract decision if the member, alternate member, or employee has knowingly accepted a contribution of over ten dollars ($10) in value in the past four years from a participant, or its agent, involved in the contract decision.

(5) No member, alternate member, or employee of the authority, or member of their immediate families shall accept, solicit, or direct a contribution of over ten dollars ($10) in value or amount from a construction company, engineering firm, consultant, legal firm, or any company, vendor, or business entity that has contracted with the authority in the preceding four years.

(b) A member, alternate member, or employee of the authority who has participated as a decisionmaker in the preparation, evaluation, award, or implementation of a contract and who leaves the authority shall not, within three years of leaving the authority, accept employment with any company, vendor, or business entity that was awarded a contract as a result of his or her participation, evaluation, award, or implementation of that contract.

SEC. 3. Section 130051.25 is added to the Public Utilities Code, to read:

130051.25. (a) For the purpose of this section, "recordable injury" means any injury requiring treatment beyond simple first aid.

(b) A construction firm that contracts with the Los Angeles County Metropolitan Transportation Authority shall report total recordable injuries to the authority on a monthly basis.

(c) The authority shall annually determine if the number of recordable injuries reported to the authority during the preceding calendar year exceeded the national average of similar injuries as reported by the Bureau of Labor Statistics for the most recent published year. If the authority determines that the number of recordable injuries reported to the authority during the preceding calendar year exceeded the national average, the authority shall not

base any safety bonus program for contractors on injuries that result in lost time, and shall base such a program on the overall rate of recordable injuries.

CHAPTER 658

An act relating to the payment of judgments and settlement claims against the State of California, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. (a) The sum of five hundred twenty-five thousand dollars ($525,000) is hereby appropriated from the Property Acquisition Law Account in the General Fund to the Attorney General for allocation to pay the following judgments and settlement claims pursuant to the following schedule:

Five hundred twenty-five thousand dollars ($525,000) for the case of East Valley Water District v. Department of General Services (Superior Court; San Bernardino County, Case No. SCV01657).

(b) The sum of one million nine hundred thirty thousand two hundred sixty-one dollars ($1,930,261) is hereby appropriated from the General Fund to the Attorney General to pay attorney fees, including interest, awarded in the case of American Academy of Pediatrics v. Daniel E. Lungren (Superior Court; City and County of San Francisco, Case No. 884574).

SEC. 2. (a) The Legislature hereby finds and declares that the payment of punitive damages awarded in the case of Herbert Greene v. Robert Konkel et al (United States District Court; Southern District of California No. 941516 BTM) meets the conditions for payment of a punitive damages claim, as outlined in subdivision (b) of Section 825 of the Government Code.

(b) The Department of Corrections is hereby authorized, pursuant to subdivision (b) of Section 825 of the Government Code, to pay a sum in an amount up to and including ten thousand five hundred sixty-four dollars ($10,564) from funds appropriated to the department in Item 5240-001-0001 of the Budget Act of 1997 to satisfy the judgment, including interest, for punitive damages in the case of Herbert Greene v. Robert Konkel et al (United States District Court; Southern District of California No. 941516 BTM).

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 pay judgments and settlement claims against the state and end hardship to claimants as quickly as possible, it is necessary for this act to take effect immediately.

CHAPTER 659

An act to relating to energy resources, and making an appropriation therefor.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Notwithstanding Sections 13340 and 16361 of the Government Code, and to the extent permitted by federal law, the sum of thirty-two million six hundred forty-six thousand dollars ($32,646,000) of the money in the Federal Trust Fund, created by Section 16360 of the Government Code, received by the state from federal oil overcharge funds in the Petroleum Violation Escrow Account, as defined by Section 155 of the Further Continuing Appropriations Act of 1983 (P.L. 97-377) or other federal law, and consisting of federal oil overcharge funds available pursuant to court judgments or federal agency orders, is hereby appropriated for expenditure, as follows:

(a) The sum of eighteen million two hundred thirty-three thousand dollars ($18,233,000) to the State Energy Resources Conservation and Development Commission, to be allocated as follows:

(1) (A) Four million dollars ($4,000,000) for the transportation, technology advancement, and commercialization program, of which up to three hundred thousand dollars ($300,000) shall be used as the state match for the Technology and Information Center at the University of Southern California.

(B) Two hundred thousand dollars ($200,000) to support the Davis Photovoltaic Center.

(C) Six hundred ninety-five thousand dollars ($695,000) to provide loans and technical assistance for the Energy in Agriculture Loan program.

(2) (A) One hundred eighty thousand dollars ($180,000) to the City of Pasadena to replace heating and air-conditioning equipment for the Jackie Robinson Center.

(B) Forty thousand dollars ($40,000) to the City of Temple City for an alternative fuel vehicle program.

(C) One hundred fifteen thousand dollars ($115,000) to the City of Pasadena to replace heating and air-conditioning equipment for the Hastings Library.

(D) Two hundred fifty thousand dollars ($250,000) to the City of Burbank for electric vehicles.

(E) One hundred thousand dollars ($100,000) to Community Enhancement Services, a nonprofit organization, for energy audits, weatherization, appliance replacement, and energy education and evaluation.

(F) Two hundred thousand dollars ($200,000) to the City of Redondo Beach to buy-down alternative fuel vehicles and recharging infrastructure.

(G) One hundred eighty-two thousand dollars ($182,000) to the City of Modesto for air-conditioning units for Modesto High School.

(H) Eighty-six thousand dollars ($86,000) to the City of Turlock for air-conditioning and heating equipment for the Police Administration, Community Service, and Support Services Building.

(I) Fifty-four thousand dollars ($54,000) to the City of Atwater for air-conditioning replacement for the civic center.

(J) Seventy thousand dollars ($70,000) to the County of San Joaquin to purchase an alternative fuel vehicle.

(K) Forty-five thousand dollars ($45,000) to the County of San Joaquin to purchase an alternative fuel vehicle.

(L) Sixty thousand dollars ($60,000) to the City of Manteca for energy efficiency upgrades to the Parks and Recreation Building at City Hall.

(M) One hundred twenty-five thousand dollars ($125,000) to the West Angeles Community Development Corporation for development of solar technologies.

(N) One hundred thousand dollars ($100,000) to FAME Renaissance, a division of the FAME Assistance Corporation, to conduct energy audits of businesses and households.

(O) One hundred thousand dollars ($100,000) to the City of Culver City for alternative fuel infrastructure.

(P) Two hundred thousand dollars ($200,000) to the South Bay Unified School District in Imperial Beach for installation of solar energy technology for schools and other public facilities of the district.

(Q) One hundred fifty thousand dollars ($150,000) to the City of San Jose for light emitting diode traffic light conversion.

(R) Fifty thousand dollars ($50,000) to West-Valley Mission College for a telecommuting center project.

(S) One hundred thousand dollars ($100,000) to the Urban Corps of San Diego for an alternative fuel vehicle.

(T) One hundred thousand dollars ($100,000) to the City of San Diego for an alternative fuel vehicle.

(U) Ninety-three thousand dollars ($93,000) to the Mendocino Unified School District for alternative energy features of the Albion School project.

(V) One hundred fifty thousand dollars ($150,000) to the North Coast School Consortium to replace a Type 1 bus with an alternative fuel schoolbus.

(W) Fifty thousand dollars ($50,000) to the County of Fresno for purchase of an alternative fuel bookmobile.

(X) Fifty thousand dollars ($50,000) to the City of National City for civic center heating and cooling.

(Y) One hundred ten thousand dollars ($110,000) to the Southeast Community Development Corporation for an alternative fuel shuttle project, Train 'N Wheels.

(Z) One hundred fifteen thousand dollars ($115,000) to the Fremont Unified School District to build an alternative fuel vehicle fueling facility.

(AA) One hundred thousand dollars ($100,000) to the Santa Monica Municipal Bus Lines for expansion of Big Blue Bus TIDE shuttle service.

(BB) Ninety thousand dollars ($90,000) to the City of San Gabriel for heating, ventilation, and air-conditioning upgrades at the San Gabriel Civic Auditorium.

(CC) Fifty thousand dollars ($50,000) to the Alhambra School District to purchase an alternative fuel vehicle.

(DD) One hundred fifteen thousand dollars ($115,000) to the City of Hayward to purchase a compressed natural gas powered vehicle and an electric powered vehicle.

(EE) One hundred thousand dollars ($100,000) to the Santa Cruz Metropolitan Transit District for an alternative fuel program.

(FF) Forty thousand dollars ($40,000) to Sonoma State University for the development of an Environmental Technology Center for Sustainable Architecture and Energy Efficiency (ETC).

(GG) Seventy-five thousand dollars ($75,000) to the City and County of San Francisco Department of Parks for energy renovations at Presidio Center.

(HH) Sixty thousand dollars ($60,000) to the City of Montebello for an energy efficient variable speed water pump.

(II) Forty-five thousand dollars ($45,000) to the City of Pittsburg for an energy efficient HVAC system for the city gym.

(JJ) Three thousand dollars ($3,000) to the City of Pittsburg for insulation of city offices.

(KK) Seventy-five thousand dollars ($75,000) to Compton Community College for an alternative fuel vehicle program.

(LL) One hundred twenty-five thousand dollars ($125,000) to the County of Orange for an alternative fuel vehicle program for the county conservation corps.

(MM) Two hundred fifty thousand dollars ($250,000) to the Sacramento County Local Re-use Authority and the Sacramento Electric Transportation Coalition for funding for an electric shuttle and fuel cell bus development and demonstration project.

(NN) One hundred thousand dollars ($100,000) to the County of Tulare to install new variable frequency drives (VFD) at various county facilities.

(OO) Eighty thousand dollars ($80,000) to the City of El Cajon to replace outdated lighting at sports fields.

(PP) One hundred sixty-nine thousand dollars ($169,000) to Riverside County for funds to replace the county's 1975 Gerstenlager Bookmobile with an updated alternative fuel-powered model.

(QQ) One hundred thousand dollars ($100,000) to the City of Lompoc to continue with weatherization of homes for low- to moderate-income residents.

(RR) Two hundred ten thousand dollars ($210,000) to the University of California at Irvine to expand and utilize the capacity of the National Fuel Cell Research Center.

(SS) Two hundred thousand dollars ($200,000) to the San Jose Unified School District for replacement of the diesel powered bus fleet with natural gas vehicles.

(TT) One hundred twenty-five thousand dollars ($125,000) to the Ventura County Air Pollution Control District to purchase electric vehicles and related recharging infrastructure within the district.

(UU) One hundred twenty thousand dollars ($120,000) to the Salinas City School District for a natural gas schoolbus.

(VV) One hundred twenty thousand dollars ($120,000) to the Berryessa Union School District for a clean natural gas schoolbus.

(WW) Sixty-five thousand dollars ($65,000) to the City of Del Mar to replace existing gasoline vehicles with compressed natural gas vehicles.

(XX) One hundred fifty thousand dollars ($150,000) to the Petroleum Technology Transfer Council at the University of Southern California, to assist oil and gas producers to extend the economic life of producing reservoirs.

(YY) Two hundred thousand dollars ($200,000) to the Lamorinda School Bus Agency for a compressed natural gas (CNG) fueling station.

(ZZ) One hundred eighty thousand dollars ($180,000) to the California State Polytechnic University, Pomona, for a center for lighting education and applied research (CLEAR).

(AAA) Two hundred twenty-five thousand dollars ($225,000) to the City of Anaheim to purchase electric vehicles and related recharging infrastructure.

(BBB) One hundred thousand dollars ($100,000) to the City of Oceanside for the replacement of heating, ventilation, and air-conditioning systems with energy efficient units.

(CCC) One hundred twenty-five thousand dollars ($125,000) to the City of Ridgecrest to complete nine projects for the Civic Center Complex to make it more energy efficient.

(DDD) One hundred sixty-six thousand dollars ($166,000) to the City of Delano to purchase two compressed natural gas transit vehicles.

(EEE) Fifty thousand dollars ($50,000) to the City of Kerman for a wellsite SCADA System and PLC controls.

(FFF) One hundred eighty thousand dollars ($180,000) to Butte College for purchase of new CNG buses.

(GGG) Fifty-five thousand dollars ($55,000) to the City of Sacramento for the purchase and planting of trees for energy conservation and efficiency.

(3) (A) Three hundred thousand dollars ($300,000) to the California State University, San Diego, for development of a hybrid electric vehicle.

(B) Three hundred thousand dollars ($300,000) to the Town of Yucca Valley for alternative fuel infrastructure.

(C) One hundred seventy-five thousand dollars ($175,000) to Sonoma State University for the development of the Environmental Technology Center for Sustainable Architecture and Energy Efficiency.

(D) One hundred twenty-five thousand dollars ($125,000) to the City of Santa Fe Springs for alternative fuel vehicles and related infrastructure.

(E) Six hundred thousand dollars ($600,000) to the San Joaquin Valley Clean Air Transportation Coalition for liquified natural gas fueling stations for the San Joaquin Valley Clean Fuel Corridor.

(F) Sixty thousand dollars ($60,000) to Compton Community College for alternative fuel vehicles.

(G) Seventy-five thousand dollars ($75,000) to the City of Manhattan Beach for alternative fuel vehicles and related infrastructure.

(H) One hundred seventy-five thousand dollars ($175,000) to the City of West Hollywood for alternative fuel vehicles and related infrastructure.

(I) One hundred fifty thousand dollars ($150,000) to the City of Winters for alternative fuel vehicles and related infrastructure.

(J) One hundred thousand dollars ($100,000) to Sutter County for alternative fuel vehicles and related infrastructure.

(K) Fifty thousand dollars ($50,000) to the University of California at Davis for the research and development of a hybrid electric vehicle.

(L) Two hundred fifty thousand dollars ($250,000) to the City of Seal Beach for alternative fuel vehicles and related infrastructure.

(M) One hundred seventy-five thousand dollars ($175,000) to the City of Long Beach for alternative fuel vehicles and related infrastructure.

(N) Two hundred thousand dollars ($200,000) to the Sunline Transit Agency for alternative fuel vehicles.

(O) One hundred thousand dollars ($100,000) to the City of Santa Clarita for alternative fuel vehicles and related infrastructure.

(P) Two hundred thousand dollars ($200,000) to the Golden Empire Transit District for alternative fuel vehicles and related infrastructure.

(Q) One hundred thousand dollars ($100,000) to the City of San Luis Obispo for an electric battery powered vehicle.

(R) Three hundred thousand dollars ($300,000) to the City of Chula Vista for the development of a prototype zinc-air fuel cell electric pickup truck.

(S) One hundred seventy-five thousand dollars ($175,000) to the County of Los Angeles for electric vehicles and related recharging infrastructure.

(T) One hundred fifty thousand dollars ($150,000) to the Burbank Airport for purchase of alternative fuel vehicles.

(U) One hundred fifteen thousand dollars ($115,000) to the Mountain View School District for an alternative fuel schoolbus.

(V) Twenty thousand dollars ($20,000) to the Mendocino Council of Governments for a zero-emission vehicle demonstration project.

(W) Seventy-five thousand dollars ($75,000) to the West Valley-Mission Community College District for alternative fuel vehicles.

(X) One hundred thousand dollars ($100,000) to the City of Thousand Oaks for alternative fuel vehicles and related infrastructure.

(Y) One hundred seventy-five thousand dollars ($175,000) to the Sacramento City Unified School District for installation of energy efficiency upgrades at public schools.

(AA) One hundred seventy-five thousand dollars ($175,000) to the Lynwood Unified School District for installation of energy efficient upgrades at public schools.

(BB) Six hundred thousand dollars ($600,000) to the Southern California Edison Company for the Southern California Edison Distributed Generation Research Program, including the Edison Solar Neighborhood Project.

(CC) Four hundred twenty-five thousand dollars ($425,000) to the San Francisco City College for installation of energy efficiency upgrades.

(DD) Two hundred thousand dollars ($200,000) to the City of Modesto for installation of energy efficiency upgrades at the police department, Maddux Youth Center, and McHenry Museum.

(EE) Forty-five thousand dollars ($45,000) to the City of Ceres for the installation of energy efficiency upgrades.

(FF) Two hundred thousand dollars ($200,000) to the University of California, Davis, for the Energy Efficient Rice Straw Disposal Demonstration Program.

(GG) Fifty thousand dollars ($50,000) to the Logan Heights Family Health Center for installation of energy efficiency upgrades at the Spring Valley Family Health Center.

(HH) Seventy-five thousand dollars ($75,000) to the City of El Cajon for installation of energy efficiency upgrades at the city hall and police department.

(II) Sixty-five thousand dollars ($65,000) to the City of Glendale for a weatherization program for single and multifamily dwellings.

(JJ) Eighty thousand dollars ($80,000) to the Humboldt Arts Council, Eureka for energy efficiency upgrades at the Carnegie Library.

(KK) Five thousand dollars ($5,000) for energy efficient upgrades to the windows at the Clarke Memorial Museum, Eureka.

(LL) Fifty thousand dollars ($50,000) to the County of Del Norte for energy efficiency upgrades at the courthouse annex.

(MM) Two hundred thousand dollars ($200,000) to the County of Solano for energy efficiency upgrades at the laboratory in the Vallejo Health and Social Services Building.

(NN) Two hundred thousand dollars ($200,000) to Contra Costa County for the construction of a digital microwave conversion project for telecommuting purposes.

(b) The sum of nine million seven hundred fifty-one thousand dollars ($9,751,000) to the California Conservation Corps to be allocated as follows:

(1) One million four hundred fifty thousand dollars ($1,450,000) to support the Southern California Energy Center.

(2) Three hundred one thousand dollars ($301,000) to support the Solano County energy conservation program.

(3) Eight million dollars ($8,000,000) to perform energy audits and weatherization of low-income housing.

(c) Four million six hundred sixty-two thousand dollars ($4,662,000) to the Department of Transportation, to be allocated as follows:

(1) Two million dollars ($2,000,000) for the Bay Area Rapid Transit/San Francisco Airport extension.

(2) (A) One hundred seventy-five thousand dollars ($175,000) to the City of Lakewood for the Traffic Signal Energy Conservation Program.

(B) Seventy-five thousand dollars ($75,000) to the City of Downey for a transit center.

(C) Fifty thousand dollars ($50,000) to the City of Cerritos for the Town Center Improvements--Signal Synchronization project.

(D) One hundred twenty-five thousand dollars ($125,000) to the University of California, Riverside College of Engineering, Center for Environmental Research for construction the California Speedway test track and onsite laboratory in Fontana.

(E) One hundred thousand dollars ($100,000) to the City of West Hollywood for installation of new traffic signal technology and traffic signal coordination technology.

(F) Forty-two thousand dollars ($42,000) for the City of Westlake Village for traffic signal synchronization.

(G) Seventy-five thousand dollars ($75,000) to the City of La Puente for the Signal Synchronization Project.

(H) Seventy-five thousand dollars ($75,000) to the City of San Jose for the replacement of incandescent lamp traffic signals with LED devices.

(I) Two hundred twenty-five thousand dollars ($225,000) to the City of Ontario for high efficiency LED lights at intersections.

(J) Thirty-five thousand dollars ($35,000) to the City of Moreno Valley for the Perris Boulevard interconnect and synchronization of traffic signal system.

(K) One hundred eighty thousand dollars ($180,000) to the City of Lancaster to cover the remaining cost of completing the Lancaster Metrolink Station Park-N-Ride project.

(L) One hundred twenty thousand dollars ($120,000) to the City of Murrieta for funding the replacement of incandescent bulbs with LEDs in all existing traffic signals.

(3) (A) One hundred seventy-five thousand dollars ($175,000) to San Joaquin Council of Governments for the construction of a Park and Ride Lot near I-205 and Grant Line Road in San Joaquin County.

(B) Two hundred fifty thousand dollars ($250,000) to the Gold Country Transportation Alliance for the Sesquicentennial Traffic Mitigation and Traveler Information Project utilizing intercity and intracity bus and train shuttle services.

(C) Two hundred fifteen thousand dollars ($215,000) to the City of Alameda for a ferry that will have increased capacity for ridership.

(D) Two hundred thousand dollars ($200,000) to the County of Monterey for the construction of the Seaside Transit Plaza.

(E) One hundred fifty-five thousand dollars ($155,000) to the City of Modesto to upgrade incandescent lamps in traffic signals with energy efficient light emitting diode traffic lights.

(F) Ninety-five thousand dollars ($95,000) to the City of Morrow Bay for the installation of a traffic signal at the intersection of Highway 1 and Yerba Buena Avenue to improve traffic flow.

(G) One hundred twenty thousand dollars ($120,000) to the County of San Mateo for the installation of a traffic signal at the intersection of Middlefield Road and Semi Circular in Redwood City/North Fair Oaks to improve traffic flow.

(H) Seventy-five thousand dollars ($75,000) to the City of Eureka for the installation of a traffic signal at the intersection of Buhne and "S" Streets to improve traffic flow.

(I) One hundred thousand dollars ($100,000) to the City of San Jose to upgrade incandescent lamps in traffic signals with energy efficient light emitting diode traffic lights.

SEC. 2. Notwithstanding any other provision of law, funds appropriated by subparagraph (A) of paragraph (1) of subdivision (a) of Section 1 may be used by the State Energy Resources Conservation and Development Commission to provide grants, loans, or repayable research contracts. When the commission evaluates proposals, a high-point scoring method may be used in lieu of lowest cost. Repayment terms shall be determined by the commission.

SEC. 3. The money appropriated pursuant to this act shall be disbursed by the Controller, subject to approval by the Director of Finance as to which court judgment or federal agency order is the proper source of those funds.

CHAPTER 660

An act to amend Sections 1101, 1151, and 1182 of, and to add Section 1156.6 to, the Harbors and Navigation Code, relating to vessels, and making an appropriation therefor.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 1101 of the Harbors and Navigation Code is amended to read:

1101. The Legislature further finds and declares all of the following:

(a) The maritime industry is necessary for the continued economic well-being and cultural development of all California citizens.

(b) The Bays of San Francisco, San Pablo, and Suisun provide a vital transportation route for the maritime industry.

(c) The increase in vessel size and traffic, and the increase in cargoes carried in bulk, particularly oil and gas and hazardous chemicals, create substantial hazards to the life, property, and values associated with the environment of such waters.

(d) The federal government has long adopted the policy of providing minimum standards which assure port and waterway safety while at the same time encouraging state control over pilot qualifications and licensing.

(e) A program of pilot regulation and licensing is necessary in order to ascertain and guarantee the qualifications, fitness, and reliability of qualified personnel who can provide safe pilotage of vessels entering and using the Bays of San Francisco, San Pablo, and Suisun.

(f) The need to assure safe and pollution-free waterborne commerce requires that pilotage services be employed in the confined and crowded waters of those bays.

(g) Bar pilotage in the Bays of San Francisco, San Pablo, and Suisun has continuously been regulated by a single-purpose state board since 1850, and that regulation and licensing should be continued.

(h) The individual physical safety and well-being of pilots is of vital importance in providing required pilot services.

SEC. 2. Section 1151 of the Harbors and Navigation Code is amended to read:

1151. Each member of the board shall be a citizen of the United States and a resident of California. Each member appointed pursuant to paragraphs (1) and (3) of subdivision (a) of Section 1150 shall be a resident of one of the following counties: San Francisco, Alameda, Contra Costa, Marin, Mendocino, Monterey, Sacramento, San Mateo, Santa Clara, Santa Cruz, Solano, San Joaquin, Napa, Sonoma, or Yolo. The member shall hold office during the pleasure of the power appointing the member, not to exceed four years from the date of the member's commission.

SEC. 3. Section 1156.6 is added to the Harbors and Navigation Code, to read:

1156.6. (a) Whenever suspected safety standard violations concerning pilot hoists, pilot ladders, or the proper rigging of pilot hoists or pilot ladders are reported to the executive director, the executive director shall immediately assign a commission investigator to personally inspect the equipment for its compliance with the relevant safety standards promulgated by the United States Coast Guard and the International Maritime Organization. Within 24 hours, the commission investigator shall report preliminary conclusions to the executive director. Further, if the commission investigator believes that the equipment is in violation of the relevant safety standards, he or she shall immediately alert the Coast Guard Marine Safety Office. The commission investigator shall submit a written report to the board. The board shall specify, by regulation, the information which shall be contained in the report.

(b) At its next monthly meeting following receipt of the commission investigator's report, the board shall consider the commission investigator's findings as well as other reports or comments from interested parties. At the conclusion of the hearing, the board shall file its own findings and recommendations with the Coast Guard.

(c) The record of the investigation, including the commission investigator's report and the board's findings and recommendations, shall be a public record maintained by the board for 10 years.

SEC. 4. Section 1182 of the Harbors and Navigation Code is amended to read:

1182. If, after a hearing, the board finds that the pilot or inland pilot is guilty of any misconduct sufficient for deprivation of the license, the board shall revoke or suspend the license of the pilot or inland pilot. The order shall be entered of record in the minutes by the administrative assistant/secretary. The 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 therein.

CHAPTER 661

An act to add Section 27 to the Business and Professions Code, and to add Section 11018.5 to the Government Code, relating to state government.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 27 is added to the Business and Professions Code, to read:

27. (a) Every entity specified in subdivision (b), on or before January 1, 1999, shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by a board and other related enforcement action taken by a board relative to persons, businesses, or facilities subject to licensure or regulation by a board. In providing information on the Internet, each entity shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records. The information shall not include personal information including home address (unless used as a business address), home telephone number, date of birth, or social security number.

(b) Each of the following entities within the Department of Consumer Affairs shall comply with the requirements of this section:

(1) The Acupuncture Committee shall disclose information on its licensees.

(2) The Board of Behavioral Science Examiners shall disclose information on its licensees, including marriage, family and child counselors; licensed clinical social workers; and licensed educational psychologists.

(3) The Board of Dental Examiners shall disclose information on its licensees.

(4) The State Board of Optometry shall disclose information regarding certificates of registration to practice optometry, statements of licensure, optometric corporation registrations, branch office licenses, and fictitious name permits of their licensees.

(5) The State Board of Registration for Professional Engineers and Land Surveyors shall disclose information on its registrants and licensees.

(6) The Structural Pest Control Board shall disclose information on its licensees, including applicators; field representatives; and operators in the areas of fumigation, general pest and wood destroying pests and organisms, and wood roof cleaning and treatment.

(7) The Bureau of Automotive Repair shall disclose information on its licensees, including auto repair dealers, smog stations, lamp and brake stations, smog check technicians, and smog inspection certification stations.

(8) The Bureau of Electronic and Appliance Repair shall disclose information on its licensees, including major appliance repair dealers, combination dealers (electronic and appliance), electronic repair dealers, service contract sellers, and service contract administrators.

(9) The cemetery program shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, crematories, and cremated remains disposers.

(10) The funeral program shall disclose information on its licensees, including, embalmers, funeral director establishments, and funeral directors.

(11) The Contractors' State License Board shall disclose information on its licensees in accordance with Chapter 9 (commencing with Section 7000) of Division 3.

(c) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (e) of Section 17538 of the Business and Professions Code.

SEC. 2. Section 11018.5 is added to the Government Code, to read:

11018.5. (a) The Department of Real Estate, on or before January 1, 1999, shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code), including information relative to suspensions and revocations of licenses issued by that state agency and other related enforcement action taken against persons, businesses, or facilities subject to licensure or regulation by a state agency.

(b) The Department of Real Estate shall disclose information on its licensees, including real estate brokers and agents, on the Internet that is in compliance with the department's public record access guidelines.

(c) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (e) of Section 17538 of the Business and Professions Code.

CHAPTER 662

An act to amend Section 35735.1 of the Education Code, relating to education.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 35735.1 of the Education Code is amended to read:

35735.1. (a) The base revenue limit per unit of average daily attendance for newly organized school districts shall be equal to the total of the amount of blended revenue limit per unit of average daily attendance of the affected school districts computed pursuant to paragraph (1), the amount based on salaries and benefits of classified employees computed pursuant to paragraph (2), the amount based on salaries and benefits of certificated employees calculated pursuant to paragraph (3), and the amount of the inflation adjustment calculated pursuant to paragraph (4). The following computations shall be made to determine the base revenue limit per unit of average daily attendance for the newly organized school districts:

(1) Divide the average daily attendance computed pursuant to Section 42238.5 into the base revenue limit computed pursuant to Section 42238 for each affected district, and then perform the following computation to arrive at the blended revenue limit:

(A) For each school district affected by the reorganization, multiply the amount determined pursuant to paragraph (1) by the number of units of average daily attendance for that school district that the county superintendent of schools determines will be included in the proposed school district.

(B) Add the amounts calculated pursuant to subparagraph (A).

(2) For each affected school district for which the employment of 25 percent or more of the classified full-time equivalent employees of the district is attributable to average daily attendance that the county superintendent of schools determines will be included in the newly organized school districts, the following computation shall be made to determine the amount to be included in the base revenue

limit per unit of average daily attendance for the newly organized school districts that is based on the salaries and benefits of classified employees:

(A) For each of those school districts, make the following computation to arrive at the highest average amount expended for salaries and benefits for classified full-time employees by the districts:

(i) Add the amount of all salaries and benefits for classified employees of the district, including both part-time and full-time employees.

(ii) Divide the amount computed in clause (i) by the total number of full-time equivalent classified employees in the district.

(B) Compare the amounts determined for each of those school districts pursuant to subparagraph (A) and identify the highest average amount expended for salaries and benefits for classified employees.

(C) For each of those school districts, subtract the amount determined for the district pursuant to subparagraph (A) from the amount identified pursuant to subparagraph (B).

(D) For each of those school districts, multiply the amount determined for the district pursuant to subparagraph (C) by the number of full-time equivalent classified employees employed by the district, and then multiply by the percentage of the district's average daily attendance to be included in the new district.

(E) Add the amounts computed for each school district pursuant to subparagraph (D).

(3) For each affected school district for which the employment of 25 percent or more of the certificated full-time equivalent employees of the district is attributable to average daily attendance that the county superintendent of schools determines will be included in the newly organized school districts, the following computation shall be made to determine the amount to be included in the base revenue limit per unit of average daily attendance for the newly organized school districts that is based on the salaries and benefits of certificated employees:

(A) For each of those school districts, make the following computation to determine the highest average amount expended for salaries and benefits for certificated full-time employees:

(i) Add the amount of all salaries and benefits for certificated employees, including both part-time and full-time employees.

(ii) Divide the amount determined in clause (i) by the total number of full-time equivalent certificated employees in the district.

(B) Compare the amounts determined for each school district pursuant to subparagraph (A) and identify the highest average amount expended for salaries and benefits for certificated employees.

(C) For each of those school districts, subtract the amount determined for the district pursuant to subparagraph (A) from the amount identified pursuant to subparagraph (B).

(D) For each of those school districts, multiply the amount determined for the district pursuant to subparagraph (C) by the number of full-time equivalent certificated employees of the school district, and then multiply by the percentage of the district's average daily attendance to be included in the new district.

(E) Add the amount calculated for each school district identified pursuant to subparagraph (D).

(4) The base revenue limit per unit of average daily attendance shall be adjusted for inflation as follows:

(A) Add the amounts determined pursuant to subparagraph (B) of paragraph (1), subparagraph (E) of paragraph (2), and subparagraph (E) of paragraph (3), and divide that sum by the number of units of average daily attendance in the newly organized school districts. The amount determined pursuant to this subparagraph shall not exceed 110 percent of the blended revenue limit per unit of average daily attendance calculated pursuant to paragraph (1).

(B) (i) Increase the amount determined pursuant to subparagraph (A) by the amount of the inflation adjustment calculated and used for apportionment purposes pursuant to Section 42238.1 for the fiscal year immediately preceding the year in which the reorganization becomes effective.

(ii) With respect to a school district that unifies effective July 1, 1997, and that has an average daily attendance in the 1996–97 fiscal year of more than 1,500 units, increase the amount determined pursuant to subparagraph (A) by an amount calculated as follows:

(I) For each component district of the newly unified district, multiply the amount of revenue limit equalization aid per unit of average daily attendance determined pursuant to Sections 42238.41, 42238.42, and 42238.43, or any other sections of law, for the 1996–97 fiscal year by the 1996–97 second principal apportionment units of average daily attendance determined pursuant to Section 42238.5 for that component district.

(II) Add the results for all component districts, and divide this amount by the sum of the 1996–97 second principal apportionment units of average daily attendance determined pursuant to Section 42238.5 for all component districts.

(C) Increase the amount determined pursuant to subparagraph (B) by the amount of the inflation adjustment calculated and used for apportionment purposes pursuant to Section 42238.1 for the fiscal year in which the reorganization becomes effective for all purposes.

(D) Increase the amount determined pursuant to subparagraph (C) by any other adjustments to the base revenue limit per unit of average daily attendance that the newly organized school districts would have been eligible to receive had they been reorganized in the fiscal year two years prior to the year in which the reorganization becomes effective for all purposes.

(b) The amount determined pursuant to subparagraph (D) of paragraph (4) of subdivision (a) shall be the base revenue limit per unit of average daily attendance for the newly organized school districts.

(c) The base revenue limit per unit of average daily attendance for the newly organized school district shall not be greater than the amount set forth in the proposal for reorganization that is approved by the State Board of Education. The Superintendent of Public Instruction may make adjustments to base revenue limit apportionments to a newly organized school district, if necessary to cause those apportionments to be consistent with this section.

(d) If the territorial jurisdiction of any school district was revised pursuant to a unification, consolidation, or other reorganization, occurring on or before July 1, 1989, that resulted in a school district having a larger territorial jurisdiction than the original school district prior to the reorganization, and a reorganization of school districts occurs on or after the effective date of the act that added this subdivision that results in a school district having a territorial jurisdiction that is substantially the same, as determined by the State Board of Education, as the territorial jurisdiction of that original school district prior to the most recent reorganization occurring on or before July 1, 1989, the revenue limit of the school district resulting from the subsequent reorganization shall be the same, notwithstanding subdivision (b), as the revenue limit that was determined for the original school district prior to the most recent reorganization occurring on or before July 1, 1989.

(e) The average daily attendance of a newly organized school district, for purposes of subdivision (d) of Section 42238, shall be the average daily attendance that is attributable to the area reorganized for the fiscal year two years prior to the fiscal year in which the new district becomes effective for all purposes.

(f) For purposes of computing average daily attendance pursuant to subdivision (d) of Section 42238 for each school district that exists prior to the reorganization and whose average daily attendance is directly affected by the reorganization, the following calculation shall apply for the fiscal year two years prior to the fiscal year in which the newly reorganized school district becomes effective:

(1) Divide the 1982–83 fiscal year average daily attendance, computed pursuant to subdivision (d) of Section 42238, by the total average daily attendance of the district pursuant to Section 42238.5.

(2) Multiply the percentage computed pursuant to paragraph (1) by the total average daily attendance of the district calculated pursuant to Section 42238.5, excluding the average daily attendance of pupils attributable to the area reorganized.

(g) This section shall not apply to any reorganization proposal approved by the State Board of Education prior to January 1, 1995.

(h) Notwithstanding any other provision of law, this section shall not be subject to waiver by the State Board of Education pursuant to Section 33050 or by the Superintendent of Public Instruction.

SEC. 2. (a) Notwithstanding any other provision of this chapter, the Nevada City School District and the Templeton Unified School District may implement a program to reduce class size in three grade levels at a schoolsite that exclusively enrolls pupils in kindergarten and grades 1 and 2 and, in addition, may implement a program to reduce class size in grade 3 at a schoolsite that exclusively enrolls pupils in grades 3 to 5, inclusive, if the program to reduce class size in grade 3 is implemented on or before September 3, 1996.

(b) It is the intent of the Legislature that the provisions of subdivision (a) not be interpreted as precedential.

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

SEC. 3. 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 with respect to the Nevada City School District and the Templeton Unified School District. The facts constituting this necessity are:

(a) The State Department of Education confirms that an error was made with regard to the implementation of the class size reduction program in the Nevada City School District and the Templeton Unified School District for the 1996–97 fiscal year.

(b) This erroneous implementation of the class size reduction program caused an economic emergency for the Nevada City School District and the Templeton School District, which, if left unresolved, would have resulted in hardship for both school districts.

(c) The State Department of Education rectified the error by funding the additional costs incurred to the school districts through the incorrect implementation of the class size reduction program in both school districts.

(d) Statutory authorization is necessary to allow the Nevada City School District and the Templeton Unified School District to retain the critical funding to avoid an economic emergency.

CHAPTER 663

An act to amend Section 1800.3 of the Probate Code, and to amend Sections 15610.07 and 15657.3 of, and to add Sections 15610.06 and 15657.05 to, the Welfare and Institutions Code, relating to elderly and dependent adults.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 1800.3 of the Probate Code is amended to read:

1800.3. (a) If the need therefor is established to the satisfaction of the court and the other requirements of this chapter are satisfied, the court may appoint:

(1) A conservator of the person or estate of an adult, or both.

(2) A conservator of the person of a minor who is married or whose marriage has been dissolved.

(b) Notwithstanding subdivision (a), a conservatorship of the person may not be established for a nonresident of this state if a conservatorship has been established, or a protective court order has been issued, in another state with respect to that person, or a proceeding to establish a conservatorship or obtain a protective court order is pending in another state with respect to that person, unless both of the following are met:

(1) The person who is or would be protected by the conservatorship or protective order is in this state.

(2) The out-of-state court in which the conservatorship has been established or the protective order has been issued, or in which there is a proceeding to establish a conservatorship or other protective order, has authorized the permanent removal of the person described in paragraph (1) to this state.

(c) Subdivision (b) shall be operative only until January 1, 2001.

SEC. 2. Section 15610.06 is added to the Welfare and Institutions Code, to read:

15610.06. "Abduction" means the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, of any elder or dependent adult who does not have the capacity to consent to the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, as well as the removal from this state or the restraint from returning to this state, of any conservatee without the consent of the conservator or the court.

SEC. 3. Section 15610.07 of the Welfare and Institutions Code is amended to read:

15610.07. "Abuse of an elder or a dependent adult" means physical abuse, neglect, fiduciary abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering, or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.

SEC. 4. Section 15657.05 is added to the Welfare and Institutions Code, to read:

15657.05. Where it is proven by clear and convincing evidence that an individual is liable for abduction, as defined in Section 15610.06, in addition to all other remedies otherwise provided by law:

(a) (1) The court shall award to the plaintiff reasonable attorney's fees and costs. The term "costs" shall include, but is not limited to, costs of representing the abductee and his or her family in this state and any other state in any action related to the abduction and returning of the abductee to this state, as well as travel expenses for returning the abductee to this state and reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim brought under this article.

(2) The award of attorney's fees shall be governed by the principles set forth in Section 15657.1.

(b) The limitations imposed by Section 377.34 of the Code of Civil Procedure on the damages recoverable shall not apply. However, the damages recovered shall not exceed the damages permitted to be recovered pursuant to subdivision (b) of Section 3333.2 of the Civil Code.

(c) The standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding the imposition of punitive damages on an employer based upon the acts of an employee shall be satisfied before any damages or attorney's fees permitted under this section may be imposed against an employer.

SEC. 5. Section 15657.3 of the Welfare and Institutions Code is amended to read:

15657.3. (a) The department of the superior court having jurisdiction over probate conservatorships shall also have concurrent jurisdiction over civil actions and proceedings involving a claim for relief arising out of the abduction, as defined in Section 15610.06, or the abuse of an elderly or dependent adult, if a conservator has been appointed for plaintiff prior to the initiation of the action for abuse.

(b) The department of the superior court having jurisdiction over probate conservatorships shall not grant relief under this article if the court determines that the matter should be determined in a civil action, but shall instead transfer the matter to the general civil calendar of the superior court. The court need not abate any proceeding for relief pursuant to this article if the court determines that the civil action was filed for the purpose of delay.

(c) The death of the elder or dependent adult does not cause the court to lose jurisdiction of any claim for relief for abuse of an elder or dependent adult.

(d) Upon petition, after the death of the elder or dependent adult, the right to maintain an action shall be transferred to the personal representative of the decedent, or if none, to the person or persons entitled to succeed to the decedent's estate.

CHAPTER 664

An act to amend Sections 25501, 25501.4, 25503.3, and 25505 of the Health and Safety Code, relating to hazardous materials.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 25501 of the Health and Safety Code is amended to read:

25501. Unless the context indicates otherwise, the following definitions govern the construction of this chapter:

(a) "Administering agency" means the local agency authorized, pursuant to Section 25502, to implement and enforce this chapter.

(b) "Agricultural handler" means an entity identified in paragraph (5) of subdivision (c) of Section 25503.5.

(c) "Area plan" means a plan established pursuant to Section 25503 by an administering agency for emergency response to a release or threatened release of a hazardous material within a city or county.

(d) "Business" means an employer, self-employed individual, trust, firm, joint stock company, corporation, partnership, or association. For purposes of this chapter, "business" includes a business organized for profit and a nonprofit business.

(e) "Business plan" means a separate plan for each facility, site, or branch of a business which meets the requirements of Section 25504.

(f) "Certification statement" means a statement signed by the business owner, operator, or officially designated representative that attests to all of the following:

(1) The information contained in the annual inventory form most recently submitted to the administering agency is complete, accurate, and up to date.

(2) There has been no change in the quantity of any hazardous material as reported in the most recently submitted annual inventory form.

(3) No hazardous materials subject to the inventory requirements of this chapter are being handled that are not listed on the most recently submitted annual inventory form.

(4) The most recently submitted annual inventory form contains the information required by Section 11022 of Title 42 of the United States Code.

(g) (1) "Certified Unified Program Agency" or "CUPA" means the agency certified by the secretary to implement the unified program specified in Chapter 6.11 (commencing with Section 25404) within a jurisdiction.

(2) "Participating Agency" or "PA" means an agency which has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary, to implement or enforce one or more of the unified program elements specified in paragraphs (4) and (5) of subdivision (c) of Section 25404, in accordance with the provisions of Sections 25404.1 and 25404.2.

(3) "Unified Program Agency" or "UPA" means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce a particular unified program element specified in paragraphs (4) and (5) of subdivision (c) of Section 25404. For purposes of this chapter, the UPAs have the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 and 25404.2, to implement and enforce only those requirements of this chapter listed in paragraphs (4) and (5) subdivision of (c) of Section 25404. The UPAs also have the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 and 25404.2, to implement and enforce the regulations adopted to implement the requirements of this chapter listed in paragraphs (4) and (5) of subdivision (c) of Section 25404. After a CUPA has been certified by the secretary, the unified program agencies shall be the only local agencies authorized to enforce the requirements of this chapter listed in paragraphs (4) and (5) of subdivision (c) of Section 25404 within the jurisdiction of the CUPA.

(h) "City" includes any city and county.

(i) "Chemical name" means the scientific designation of a substance in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry or the system developed by the Chemical Abstracts Service.

(j) "Common name" means any designation or identification, such as a code name, code number, trade name, or brand name, used to identify a substance other than by its chemical name.

(k) "Department" means the Department of Toxic Substances Control and "director" means the Director of Toxic Substances Control.

(*l*) "Emergency rescue personnel" means any public employee, including, but not limited to, any fireman, firefighter, or emergency rescue personnel, as defined in Section 245.1 of the Penal Code, or personnel of a local EMS agency, as designated pursuant to Section 1797.200, or a poison control center, as defined by Section 1797.97, who responds to any condition caused, in whole or in part, by a hazardous material that jeopardizes, or could jeopardize, public health or safety or the environment.

(m) "Handle" means to use, generate, process, produce, package, treat, store, emit, discharge, or dispose of a hazardous material in any fashion.

(n) "Handler" means any business which handles a hazardous material.

(o) "Hazardous material" means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment. "Hazardous materials" include, but are not limited to, hazardous substances, hazardous waste, and any material which a handler or the administering agency has a reasonable basis for believing that it would be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment.

(p) "Hazardous substance" means any substance or chemical product for which one of the following applies:

(1) The manufacturer or producer is required to prepare a MSDS for the substance or product pursuant to the Hazardous Substances Information and Training Act (Chapter 2.5 (commencing with Section 6360) of Part 1 of Division 5 of the Labor Code) or pursuant to any applicable federal law or regulation.

(2) The substance is listed as a radioactive material in Appendix B of Chapter 1 of Title 10 of the Code of Federal Regulations, maintained and updated by the Nuclear Regulatory Commission.

(3) The substances listed pursuant to Title 49 of the Code of Federal Regulations.

(4) The materials listed in subdivision (b) of Section 6382 of the Labor Code.

(q) "Hazardous waste" means hazardous waste, as defined by Sections 25115, 25117, and 25316.

(r) "Office" means the Office of Emergency Services.

(s) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, unless permitted or authorized by a regulatory agency.

(t) "Secretary" means the Secretary for Environmental Protection.

(u) "SIC Code" means the identification number assigned by the Standard Industrial Classification Code to specific types of businesses.

(v) "Threatened release" means a condition creating a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate damages to persons, property, or the environment.

(w) "Trade secret" means trade secrets as defined in subdivision (d) of Section 6254.7 of the Government Code and Section 1060 of the Evidence Code.

(x) "Unified Program Facility" means all contiguous land and structures, other appurtenances, and improvements on the land which are subject to the requirements of paragraphs (4) and (5) of subdivision (c) of Section 25404.

SEC. 2. Section 25501.4 of the Health and Safety Code is amended to read:

25501.4. Notwithstanding subdivision (d) of Section 25501, "business" also includes the federal government, to the extent authorized by federal law, or any agency, department, office, board, commission, or bureau of state government, including, but not limited to, the campuses of the California Community Colleges, the California State University, and the University of California.

SEC. 3. Section 25503.3 of the Health and Safety Code is amended to read:

25503.3. (a) The office shall, in consultation with the administering agencies, in accordance with Section 25503.1, adopt by regulation a single comprehensive hazardous material reporting form for businesses to submit to administering agencies for purposes of Section 25509. The form shall include a section for additional information that may be requested by the administering agency. The regulations shall also specify criteria for sharing data electronically. Except as provided in subdivisions (b) and (c), after January 1, 1997, each administering agency shall require businesses to use this form annually when complying with Section 25509.

(b) (1) Except as provided in paragraph (2), an administering agency may allow a business to submit a form designated by the administering agency for purposes of the inventory required by Section 25509 instead of the single comprehensive hazardous material reporting form adopted pursuant to subdivision (a). Any form designated by an administering agency pursuant to this paragraph shall ensure that all of the information required by Section 25509 is reported. The form shall be developed in consultation with the other agencies within the jurisdiction that are responsible for fire protection, emergency response, and environmental health. If the administering agency permits inventory information to be submitted by electronic means, the format and mode of submittal shall be developed in consultation with those other agencies and, following the adoption of standards for the sharing of electronic data pursuant to subdivision (e) of Section 25404, shall be consistent with those standards.

(2) If a business chooses to submit the single comprehensive hazardous material reporting form adopted pursuant to subdivision (a), the administering agency shall accept that form.

(c) Notwithstanding Section 25509, a business may comply with the annual inventory reporting requirements of this article by submitting a certification statement to the administering agency if both of the following apply:

(1) The business has previously filed the single comprehensive hazardous material reporting form required by subdivision (a) or the alternative form designated by the administering agency pursuant to subdivision (b).

(2) The business can attest to the statements set forth in paragraphs (1) to (4), inclusive, of subdivision (f) of Section 25501.

SEC. 4. Section 25505 of the Health and Safety Code, as amended by Chapter 365 of the Statutes of 1997, 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 report its hazardous materials inventory on the form required by subdivision (a) of Section 25503.3 or in the alternative form designated by the administering agency pursuant to subdivision (b) of Section 25503.3, or submit a certification statement to the administering agency of the county or city in which the handler is located.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code, or 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 665

An act to amend, repeal, and add Section 1373.621 of, to add Article 4.5 (commencing with Section 1366.20) to Chapter 2.2 of Division 2 of the Health and Safety Code, to amend, repeal, and add Section 10116.5 of, and to add Article 1.7 (commencing with Section 10128.50) to Chapter 1 of Part 2 of Division 2 of the Insurance Code, relating to health coverage.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Article 4.5 (commencing with Section 1366.20) is added to Chapter 2.2 of Division 2 of the Health and Safety Code, to read:

Article 4.5. California Cobra Program

1366.20. (a) This article shall be known as the California Continuation Benefits Replacement Act, or "Cal-COBRA."

(b) It is the intent of the Legislature that continued access to health insurance coverage is provided to employees, and their dependents, of employers with 2 to 19 eligible employees who are not currently offered continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985.

1366.21. The definitions contained in this section govern the construction of this article.

(a) "Continuation coverage" means extended coverage under the group benefit plan in which an eligible employee is currently enrolled, or, in the case of a termination of the group benefit plan or an employer open enrollment period, extended coverage under the group benefit plan currently offered by the employer.

(b) "Group benefit plan" means any health care service plan contract, including a specialized health care service plan contract provided pursuant to Article 3.1 (commencing with Section 1357) to an employer with 2 to 19 eligible employees, as defined in this section.

(c) "Qualified beneficiary" means any individual who, on the date of the qualifying event, is an enrollee in a group benefit plan offered by a health care service plan pursuant to Article 3.1 (commencing with Section 1357).

(d) "Qualifying event" means any of the following events that, but for the election of continuation coverage under this article, would result in a loss of coverage under the group benefit plan to a qualified beneficiary:

(1) The death of the covered employee or subscriber.

(2) The termination or reduction of hours of the covered employee's or subscriber's employment, except that termination for gross misconduct does not constitute a qualifying event.

(3) The divorce or legal separation of the covered employee from the covered employee's spouse.

(4) The loss of dependent status by a dependent enrolled in the group benefit plan.

(5) With respect to a dependent only, the covered employee's or subscriber's eligibility for coverage under Title XVIII of the United States Social Security Act (Medicare).

(e) "Employer" means any employer that meets the definition of "small employer" as set forth in Section 1357 and (1) employs fewer than 20 eligible employees on at least 50 percent of its working days during the preceding calendar year, (2) has contracted for health care coverage through a group benefit plan offered by a health care service plan, and (3) is not subject to Section 4980B of the United States Internal Revenue Code or Chapter 18 of the Employee Retirement Income Security Act, 29 U.S.C. Section 1161 et seq.

1366.22. The continuation coverage requirements of this article do not apply to the following individuals:

(a) Individuals who are entitled or become entitled to coverage pursuant to Title XVIII of the United States Social Security Act (Medicare), as amended or superseded.

(b) Individuals who are covered or become covered under another group benefit plan, including a self-insured employee welfare benefit plan, that provides coverage for individuals and that does not impose any exclusion or limitation with respect to any preexisting condition of the individual, other than a preexisting condition limitation or exclusion that does not apply to or is satisfied by the qualified beneficiary pursuant to Sections 1357 and 1357.06. A group conversion option under any group benefit plan shall not be considered as an arrangement under which an individual beneficiary is or becomes covered.

(c) Individuals who are covered, become covered, or could become covered pursuant to Section 4980B of the United States Internal Revenue Code or Chapter 18 of the Employee Retirement Income Security Act, 29 U.S.C. Section 1161 et seq.

(d) Individuals who are covered, become covered, or could become covered pursuant to Chapter 6A of the Public Health Service Act, 42 U.S.C. Section 300bb-1 et seq.

(e) Qualified beneficiaries who fail to meet the requirements of subdivision (b) of Section 1366.24 regarding notification of a

qualifying event or election of continuation coverage within the specified time limits.

(f) Qualified beneficiaries who fail to submit the correct premium amount required by subdivision (b) of Section 1366.24 and Section 1366.26, in accordance with the terms and conditions of the plan contract.

1366.23. (a) Every group health care service plan contract, or specialized health care service plan contract, that provides coverage under a group benefit plan to an employer, as defined in Section 1366.21, shall offer continuation coverage, pursuant to this section, to a qualified beneficiary under the contract upon a qualifying event without evidence of insurability. The qualified beneficiary shall, upon election, be able to continue his or her group benefit plan, subject to the contract's terms and conditions, and subject to the requirements of this article. Except as otherwise provided in this section, continuation coverage shall be provided under the same terms and conditions that apply to similarly situated individuals under the group benefit plan.

(b) Every health care service plan shall also offer the continuation coverage to a qualified beneficiary who (1) elects continuation coverage under a group benefit plan, as defined in this article or in Section 10128.51 of the Insurance Code, but whose continuation coverage is terminated pursuant to subdivision (b) of Section 1366.27, prior to any other termination date specified in Section 1366.27, or (2) who elects coverage through the health care service plan during any employer open enrollment, and the employer has contracted with the health care service plan to provide coverage to the employer's active employees. This continuation coverage shall be provided only for the balance of the period that the qualified beneficiary would have remained covered under the prior group benefit plan and group service agreement had the employer not terminated the group service agreement or contract with the previous group benefit plan.

(c) A health care service plan that provides coverage for basic health care services as well as coverage for dental and vision care shall not be required to offer to qualified beneficiaries continuation coverage for basic health care services unless the health care service plan is the only plan or insurer providing a group benefit plan to the employees of the employer. In no case shall a health care service plan that provides coverage for basic health care services as well as coverage for dental and vision care within a single group benefit plan be required to offer qualified beneficiaries continuation coverage for dental or vision care only.

(d) Any child who is born to a qualified beneficiary or who is placed for adoption with a qualified beneficiary during the period of continuation coverage provided by this article shall be entitled to receive benefits pursuant to this article, if the child is enrolled by the qualified beneficiary under a group benefit plan as a dependent of

that beneficiary within 30 days of the child's birth or placement for adoption.

1366.24. (a) Every health care service plan shall disclose to subscribers of group benefit plans subject to this article the ability to continue coverage pursuant to this article in the plan's evidence of coverage.

(b) This disclosure shall state that all enrollees who are eligible to be qualified beneficiaries, as defined in subdivision (c) of Section 1366.21, shall be required, as a condition of receiving benefits pursuant to this article, to notify the health care service plan, or the employer if the employer contracts to perform the administrative services as provided for in Section 1366.25, of all qualifying events as specified in paragraphs (1), (3), (4), and (5) of subdivision (d) of Section 1366.21 within 60 days of the date of the qualifying event. This disclosure shall inform enrollees that failure to make the notification to the health care service plan, or to the employer when under contract to provide the administrative services, within the required 60 days will disqualify the qualified beneficiary from receiving continuation coverage pursuant to this article. The disclosure shall further state that a qualified beneficiary who wishes to continue coverage under the group benefit plan pursuant to this article must request the continuation in writing and deliver, by first-class mail, or other reliable means of delivery, including personal delivery, express mail, or private courier company, to the health care service plan, or to the employer if the plan has contracted with the employer for administrative services pursuant to subdivision (d) of Section 1366.25, within the 60-day period following the later of (1) the date of the qualifying event, (2) the date the qualified beneficiary is given notice pursuant to subdivision (d) of Section 1366.25 of the ability to continue coverage under the group benefit plan by either the health care service plan or his or her employer, or (3) the date coverage under the employer's group benefit plan terminates. The disclosure required by this section shall also state that a qualified beneficiary electing continuation shall pay to the health care service plan, in accordance with the terms and conditions of the plan contract, which shall be set forth in the notice to the qualified beneficiary pursuant to subdivision (d) of Section 1366.25, the amount of the required premium payment, as set forth in Section 1366.26. The disclosure shall further require that the qualified beneficiary's first premium payment required to establish premium payment be delivered by certified mail or other reliable means of delivery, including personal delivery, express mail, or private courier company, to the health care service plan, or to the employer if the employer has contracted with the plan to perform the administrative services pursuant to subdivision (d) of Section 1366.25, within 45 days of the date the qualified beneficiary provided written notice to the health care service plan or the employer, if the employer has contracted to perform the administrative services, of the election to continue

coverage in order for coverage to be continued under this article. This disclosure shall also state that the first premium payment must equal an amount sufficient to pay all required premiums and all premiums due, and that failure to submit the correct premium amount within the 45-day period will disqualify the qualified beneficiary from receiving continuation coverage pursuant to this article.

(c) The disclosure required by this section shall also describe separately how qualified beneficiaries whose continuation coverage terminates under a prior group benefit plan pursuant to subdivision (b) of Section 1366.27 may continue their coverage for the balance of the period that the qualified beneficiary would have remained covered under the prior group benefit plan, including the requirements for election and payment. The disclosure shall clearly state that continuation coverage shall terminate if the qualified beneficiary fails to comply with the requirements pertaining to enrollment in, and payment of premiums to, the new group benefit plan within 30 days of receiving notice of the termination of the prior group benefit plan.

(d) Every plan evidence of coverage that is issued, amended, or renewed after January 1, 1999, shall contain the information required by this section. Prior to January 1, 1999, plans shall provide to all qualified beneficiaries identified by the employer pursuant to subdivision (a) of Section 1366.25 a written notice containing the information required by this section.

(e) Every plan disclosure form issued, amended, or renewed on and after January 1, 1999, for a group benefit plan subject to this article shall provide a notice that, under state law, a subscriber or eligible family member may be entitled to continuation of group coverage and that additional information regarding eligibility for this coverage may be found in the plan's evidence of coverage.

1366.25. (a) Every group service agreement between a health care service plan and an employer subject to this chapter shall require the employer to notify the plan of any employee who has had a qualifying event, as defined in paragraph (2) of subdivision (d) of Section 1366.21, within 31 days of the qualifying event.

(b) Every group service agreement between a plan and an employer shall require the employer to notify qualified beneficiaries currently receiving continuation coverage, whose continuation coverage will terminate under one group benefit plan prior to the end of the period the qualified beneficiary would have remained covered, as specified in Section 1366.27, a minimum of 30 days prior to the termination, of the qualified beneficiary's ability to continue coverage under a new group benefit plan for the balance of the period the qualified beneficiary would have remained covered under the prior group benefit plan. Notwithstanding subdivision (a), the group service agreement between the health care service plan and the employer shall require the employer to provide to a qualified

beneficiary subject to this section the necessary benefits information, premium information, enrollment forms, and instructions consistent with the the disclosure required by subdivision (c) of Section 1366.24 to allow the qualified beneficiary to continue coverage. This information shall be sent to the qualified beneficiary's last known address, as provided by the health care service plan, disability insurer, or self-funded employee welfare benefit plan currently providing continuation coverage to the qualified beneficiary.

(c) A health care service plan may contract with an employer, or an administrator, to perform the administrative requirements of this article, including required notifications and collecting and forwarding premiums to the health care service plan.

(d) Every health care service plan, or employer that contracts to perform the notice and administrative services pursuant to this section, shall, within 14 days of receiving a notice of a qualifying event, provide to the qualified beneficiary the necessary benefits information, premium information, enrollment forms, and instructions consistent with the notice requirements contained in subdivisions (b) and (c) of Section 1359.24 to allow the qualified beneficiary to formally elect continuation coverage. This information shall be sent to the qualified beneficiary's last known address.

1366.26. A qualified beneficiary electing continuation coverage shall pay to the health care service plan, on or before the due date of each payment but not more frequently than on a monthly basis, not more than 110 percent of the applicable rate charged for a covered employee or, in the case of dependent coverage, not more than 110 percent of the applicable rate charged to a similarly situated individual under the group benefit plan being continued under the group contract. In the case of a qualified beneficiary who is determined to be disabled pursuant to Title II or Title XVI of the United States Social Security Act, the qualified beneficiary shall be required to pay to the health care service plan an amount no greater than 150 percent of the group rate after the first 18 months of continuation coverage provided pursuant to this section.

1366.27. (a) The continuation coverage provided pursuant to this article shall terminate at the first to occur of the following:

(1) In the case of a qualified beneficiary who is eligible for continuation coverage pursuant to paragraph (2) of subdivision (d) of Section 1366.21, the date 18 months after the date the qualified beneficiary's benefits under the contract would otherwise have terminated because of a qualifying event.

(2) The end of the period for which premium payments were made, if the qualified beneficiary ceases to make payments or fails to make timely payments of a required premium, in accordance with the terms and conditions of the plan contract. In the case of nonpayment of premiums, reinstatement shall be governed by the terms and conditions of the plan contract.

(3) In the case of a qualified beneficiary who is eligible pursuant to paragraph (1), (3), (4), or (5) of subdivision (d) of Section 1366.21, the date 36 months after the date the qualified beneficiary's benefits under the contract would otherwise have terminated by reason of a qualifying event or the employee's becoming entitled to benefits under Title XVIII of the United States Social Security Act.

(4) The requirements of this article no longer apply to the qualified beneficiary pursuant to the provisions of Section 1366.22.

(5) In the case of a qualified beneficiary who is eligible for continuation coverage pursuant to Section 1366.21, and determined, under Title II or Title XVI of the Social Security Act, to be disabled at the time of termination of employment or eligibility or within 60 days afterward, the date 29 months after the date the qualified beneficiary's benefits under the contract would otherwise have terminated because of a qualifying event. If the qualified beneficiary is no longer disabled under Title II or Title XVI of the Social Security Act, the benefits provided in this paragraph shall terminate on the later of the date provided by paragraph (1), or the month that begins more than 31 days after the date of the final determination under Title II or Title XVI of the United States Social Security Act that the qualified beneficiary is no longer disabled.

(6) The employer, or any successor employer or purchaser of the employer, ceases to provide any group benefit plan to his or her employees.

(b) If the group service agreement between the plan and the employer is terminated prior to the date the qualified beneficiary's continuation coverage would terminate pursuant to this section, the qualified beneficiary may elect continuation coverage under the subsequent group benefit plan, if any, pursuant to the requirements of subdivision (b) of Section 1366.23 and subdivision (c) of Section 1366.24.

1366.28. A health care service plan subject to this article shall not be obligated to provide continuation coverage to a qualified beneficiary pursuant to this article if an enrollee fails to make the notification required by Section 1366.24, or if the employer of the enrollee fails to comply with Section 1366.25.

SEC. 2. Section 1373.621 of the Health and Safety Code is amended to read:

1373.621. (a) Except for a specialized health care service plan, every health care service plan contract that is issued, amended, delivered, or renewed in this state on or after January 1, 1996, that provides hospital, medical, or surgical expense coverage under an employer-sponsored group plan for an employer subject to COBRA, as defined herein, including a carrier providing replacement coverage under Section 1399.63, shall further offer the former employee the opportunity to continue benefits as required under subdivision (b), and shall further offer the former spouse of an

employee or former employee the opportunity to continue benefits as required under subdivision (c).

(b) (1) In the event a former employee who worked for the employer for at least five years prior to the date of termination of employment and who is 60 years of age or older on the date employment ends is entitled to and so elects to continue benefits under COBRA for himself or herself and for any spouse, the employee or spouse may further continue benefits beyond the date coverage under COBRA ends, as set forth in paragraph (2). Except as otherwise specified in this section, continuation coverage shall be under the same benefit terms and conditions as if the continuation coverage under COBRA had remained in force. For the employee or spouse, continuation coverage following the end of COBRA is subject to payment of premiums to the health care service plan. Individuals ineligible for COBRA are not entitled to continuation coverage under this section. Premiums for continuation coverage under this section shall be billed by, and remitted to, the health care service plan in accordance with subdivision (d). Failure to pay the requisite premiums may result in termination of the continuation coverage in accordance with the applicable provisions in the plan's group subscriber agreement with the former employer.

(2) The former employer shall notify the former employee or spouse or both, or the former spouse of the employee or former employee, of the availability of the continuation benefits under this section in accordance with Section 2800.2 of the Labor Code. To continue health care coverage pursuant to this section, the individual shall elect to do so by notifying the plan in writing within 30 calendar days prior to the date continuation coverage under COBRA is scheduled to end.

(3) The continuation coverage shall end automatically on the earlier of (A) the date the individual reaches age 65, (B) the date the individual is covered under any group health plan not maintained by the employer, regardless of whether that coverage is less valuable, (C) the date the individual becomes entitled to Medicare under Title XVIII of the Social Security Act, (D) for a spouse, five years from the date on which continuation coverage under COBRA was scheduled to end for the spouse, or (E) the date on which the former employer terminates its group subscriber agreement with the health care service plan and ceases to provide coverage for any active employees through that plan, in which case the health care service plan shall notify the former employee or spouse or both of the right to a conversion plan in accordance with Section 1373.6.

(c) (1) If a former spouse of an employee or former employee was covered as a qualified beneficiary under COBRA, the former spouse may further continue benefits beyond the date coverage under COBRA ends, as set forth in paragraph (2) of subdivision (b). Except as otherwise specified in this section, continuation coverage shall be under the same benefit terms and conditions as if the

continuation coverage under COBRA had remained in force. Continuation coverage following the end of COBRA is subject to payment of premiums to the health care service plan. Premiums for continuation coverage under this section shall be billed by, and remitted to, the health care service plan in accordance with subdivision (d). Failure to pay the requisite premiums may result in termination of the continuation coverage in accordance with the applicable provisions in the plan's group subscriber agreement with the employer or former employer.

(2) The continuation coverage for the former spouse shall end automatically on the earlier of (A) the date the individual reaches 65 years of age, (B) the date the individual is covered under any group health plan not maintained by the employer, regardless of whether that coverage is less valuable, (C) the date the individual becomes entitled to Medicare under Title XVIII of the Social Security Act, (D) five years from the date on which continuation coverage under COBRA was scheduled to end for the former spouse, or (E) the date on which the employer or former employer terminates its group subscriber agreement with the health care service plan and ceases to provide coverage for any active employees through that plan, in which case the health care service plan shall notify the former spouse of the right to a conversion plan in accordance with Section 1373.6.

(d) (1) If the premium charged to the employer for a specific employee is adjusted for the age of the specific employee on other than a composite basis, the rate for continuation coverage under this section shall not exceed 102 percent of the premium charged by the plan to the employer for an employee of the same age as the former employee electing continuation coverage. If the coverage continued is that of a former spouse, the premium charged shall not exceed 102 percent of the premium charged by the plan to the employer for an employee of the same age as the former spouse selecting continuation coverage.

(2) If the premium charged to the employer for a specific employee is not adjusted for age of the specific employee, then the rate for continuation coverage under this section shall not exceed 213 percent of the applicable current group rate. For purposes of this section, the "applicable current group rate" means the total premiums charged by the health care service plan for coverage for the group, divided by the relevant number of covered persons. However, in computing the premiums charged to the specific employer group, the health care service plan shall not include consideration of the specific medical care expenditures for beneficiaries receiving continuation coverage pursuant to this section.

(e) For purposes of this section, "COBRA" means Section 4980B of Title 26 of the United States Code, Section 1161 et seq. of Title 29 of the United States Code, and Section 300bb of Title 42 of the United

States Code, as added by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272), and as amended.

(f) For the purposes of this section, "former spouse" means either an individual who is divorced from an employee or former employee or an individual who was married to an employee or former employee at the time of the death of the employee or former employee.

(g) 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. 3. Section 1373.621 is added to the Health and Safety Code, to read:

1373.621. (a) Except for a specialized health care service plan, every health care service plan contract that is issued, amended, delivered, or renewed in this state on or after January 1, 1999, that provides hospital, medical, or surgical expense coverage under an employer-sponsored group plan for an employer subject to COBRA, as defined in subdivision (e), or an employer group for which the plan is required to offer Cal-COBRA coverage, as defined in subdivision (f), including a carrier providing replacement coverage under Section 1399.63, shall further offer the former employee the opportunity to continue benefits as required under subdivision (b), and shall further offer the former spouse of an employee or former employee the opportunity to continue benefits as required under subdivision (c).

(b) (1) In the event a former employee who worked for the employer for at least five years prior to the date of termination of employment and who is 60 years of age or older on the date employment ends is entitled to and so elects to continue benefits under COBRA or Cal-COBRA for himself or herself and for any spouse, the employee or spouse may further continue benefits beyond the date coverage under COBRA or Cal-COBRA ends, as set forth in paragraph (2). Except as otherwise specified in this section, continuation coverage shall be under the same benefit terms and conditions as if the continuation coverage under COBRA or Cal-COBRA had remained in force. For the employee or spouse, continuation coverage following the end of COBRA or Cal-COBRA is subject to payment of premiums to the health care service plan. Individuals ineligible for COBRA or Cal-COBRA are not entitled to continuation coverage under this section. Premiums for continuation coverage under this section shall be billed by, and remitted to, the health care service plan in accordance with subdivision (d). Failure to pay the requisite premiums may result in termination of the continuation coverage in accordance with the applicable provisions in the plan's group subscriber agreement with the former employer.

(2) The former employer shall notify the former employee or spouse or both, or the former spouse of the employee or former employee, of the availability of the continuation benefits under this

section in accordance with Section 2800.2 of the Labor Code. To continue health care coverage pursuant to this section, the individual shall elect to do so by notifying the plan in writing within 30 calendar days prior to the date continuation coverage under COBRA or Cal-COBRA is scheduled to end.

(3) The continuation coverage shall end automatically on the earlier of (A) the date the individual reaches age 65, (B) the date the individual is covered under any group health plan not maintained by the employer, regardless of whether that coverage is less valuable, (C) the date the individual becomes entitled to Medicare under Title XVIII of the Social Security Act, (D) for a spouse, five years from the date on which continuation coverage under COBRA or Cal-COBRA was scheduled to end for the spouse, or (E) the date on which the former employer terminates its group subscriber agreement with the health care service plan and ceases to provide coverage for any active employees through that plan, in which case the health care service plan shall notify the former employee or spouse or both of the right to a conversion plan in accordance with Section 1373.6.

(c) (1) If a former spouse of an employee or former employee was covered as a qualified beneficiary under COBRA or Cal-COBRA, the former spouse may further continue benefits beyond the date coverage under COBRA or Cal-COBRA ends, as set forth in paragraph (2) of subdivision (b). Except as otherwise specified in this section, continuation coverage shall be under the same benefit terms and conditions as if the continuation coverage under COBRA or Cal-COBRA had remained in force. Continuation coverage following the end of COBRA or Cal-COBRA is subject to payment of premiums to the health care service plan. Premiums for continuation coverage under this section shall be billed by, and remitted to, the health care service plan in accordance with subdivision (d). Failure to pay the requisite premiums may result in termination of the continuation coverage in accordance with the applicable provisions in the plan's group subscriber agreement with the employer or former employer.

(2) The continuation coverage for the former spouse shall end automatically on the earlier of (A) the date the individual reaches 65 years of age, (B) the date the individual is covered under any group health plan not maintained by the employer, regardless of whether that coverage is less valuable, (C) the date the individual becomes entitled to Medicare under Title XVIII of the Social Security Act, (D) five years from the date on which continuation coverage under COBRA or Cal-COBRA was scheduled to end for the former spouse, or (E) the date on which the employer or former employer terminates its group subscriber agreement with the health care service plan and ceases to provide coverage for any active employees through that plan, in which case the health care service plan shall notify the former spouse of the right to a conversion plan in accordance with Section 1373.6.

(d) (1) If the premium charged to the employer for a specific employee is adjusted for the age of the specific employee on other than a composite basis, the rate for continuation coverage under this section shall not exceed 102 percent of the premium charged by the plan to the employer for an employee of the same age as the former employee electing continuation coverage. If the coverage continued is that of a former spouse, the premium charged shall not exceed 102 percent of the premium charged by the plan to the employer for an employee of the same age as the former spouse selecting continuation coverage.

(2) If the premium charged to the employer for a specific employee is not adjusted for age of the specific employee, then the rate for continuation coverage under this section shall not exceed 213 percent of the applicable current group rate. For purposes of this section, the "applicable current group rate" means the total premiums charged by the health care service plan for coverage for the group, divided by the relevant number of covered persons. However, in computing the premiums charged to the specific employer group, the health care service plan shall not include consideration of the specific medical care expenditures for beneficiaries receiving continuation coverage pursuant to this section.

(e) For purposes of this section, "COBRA" means Section 4980B of Title 26 of the United States Code, Section 1161 et seq. of Title 29 of the United States Code, and Section 300bb of Title 42 of the United States Code, as added by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272), and as amended.

(f) For purposes of this section, "Cal-COBRA" means the continuation coverage that must be offered pursuant to Article 4.5 (commencing with Section 1366.20), or Article 1.7 (commencing with Section 10128.50) of Chapter 1 of Part 2 of Division 2 of the Insurance Code.

(g) For the purposes of this section, "former spouse" means either an individual who is divorced from an employee or former employee or an individual who was married to an employee or former employee at the time of the death of the employee or former employee.

(h) This section shall take effect on January 1, 1999.

SEC. 4. Section 10116.5 of the Insurance Code is amended to read:

10116.5. (a) Every policy of disability insurance that is issued, amended, delivered, or renewed in this state on or after January 1, 1996, that provides hospital, medical, or surgical expense coverage under an employer-sponsored group plan for an employer subject to COBRA, as defined herein, including a carrier providing replacement coverage under Section 10128.3, shall further offer the former employee the opportunity to continue benefits as required under subdivision (b), and shall further offer the former spouse of an

employee or former employee the opportunity to continue benefits as required under subdivision (c).

(b) (1) In the event a former employee who worked for the employer for at least five years prior to the date of termination of employment and who is 60 years of age or older on the date employment ends is entitled to and so elects to continue benefits under COBRA for himself or herself and for any spouse, the employee or spouse may further continue benefits beyond the date coverage under COBRA ends, as set forth in paragraph (2). Except as otherwise specified in this section, continuation coverage shall be under the same benefit terms and conditions as if the continuation coverage under COBRA had remained in force. For the employee or spouse, continuation coverage following the end of COBRA is subject to payment of premiums to the insurer. Individuals ineligible for COBRA are not entitled to continuation coverage under this section. Premiums for continuation coverage under this section shall be billed by, and remitted to, the insurer in accordance with subdivision (d). Failure to pay the requisite premiums may result in termination of the continuation coverage in accordance with the applicable provisions in the insurer's group contract with the former employer.

(2) The former employer shall notify the former employee or spouse or both, or the former spouse of the employee or former employee, of the availability of the continuation benefits under this section in accordance with Section 2800.2 of the Labor Code. To continue health care coverage pursuant to this section, the individual shall elect to do so by notifying the insurer in writing within 30 calendar days prior to the date continuation coverage under COBRA is scheduled to end.

(3) The continuation coverage shall end automatically on the earlier of (A) the date the individual reaches age 65, (B) the date the individual is covered under any group health plan not maintained by the employer, regardless of whether that coverage is less valuable, (C) the date the individual becomes entitled to Medicare under Title XVIII of the Social Security Act, (D) for a spouse, five years from the date on which continuation coverage under COBRA was scheduled to end for the spouse, or (E) the date on which the former employer terminates its group contract with the insurer and ceases to provide coverage for any active employees through that insurer, in which case the insurer shall notify the former employee or spouse or both of the right to a conversion policy.

(c) (1) If a former spouse of an employee or former employee was covered as a qualified beneficiary under COBRA, the former spouse may further continue benefits beyond the date coverage under COBRA ends, as set forth in paragraph (2) of subdivision (b). Except as otherwise specified in this section, continuation coverage shall be under the same benefit terms and conditions as if the continuation coverage under COBRA had remained in force. Continuation coverage following the end of COBRA is subject to

payment of premiums to the insurer. Premiums for continuation coverage under this section shall be billed by, and remitted to, the insurer in accordance with subdivision (d). Failure to pay the requisite premiums may result in termination of the continuation coverage in accordance with the applicable provisions in the insurer's group contract with the employer or former employer.

(2) The continuation coverage for the former spouse shall end automatically on the earlier of (A) the date the individual reaches 65 years of age, (B) the date the individual is covered under any group health plan not maintained by the employer, regardless of whether that coverage is less valuable, (C) the date the individual becomes entitled to Medicare under Title XVIII of the Social Security Act, (D) five years from the date on which continuation coverage under COBRA was scheduled to end for the former spouse, or (E) the date on which the employer or former employer terminates its group contract with the insurer and ceases to provide coverage for any active employees through that insurer, in which case the insurer shall notify the former spouse of the right to a conversion policy.

(d) (1) If the premium charged to the employer for a specific employee is adjusted for the age of the specific employee on other than a composite basis, the rate for continuation coverage under this section shall not exceed 102 percent of the premium charged by the insurer to the employer for an employee of the same age as the former employee electing continuation coverage. If the coverage continued is that of a former spouse, the premium charged shall not exceed 102 percent of the premium charged by the plan to the employer for an employee of the same age as the former spouse selecting continuation coverage.

(2) If the premium charged to the employer for a specific employee is not adjusted for age of the specific employee, then the rate for continuation coverage under this section shall not exceed 213 percent of the applicable current group rate. For purposes of this section, the "applicable current group rate" means the total premiums charged by the insurer for coverage for the group, divided by the relevant number of covered persons. However, in computing the premiums charged to the specific employer group, the insurer shall not include consideration of the specific medical care expenditures for beneficiaries receiving continuation coverage pursuant to this section.

(e) For purposes of this section, "COBRA" means Section 4980B of Title 26 of the United States Code, Section 1161 et seq. of Title 29 of the United States Code, and Section 300bb of Title 42 of the United States Code, as added by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272), and as amended.

(f) For the purposes of this section, "former spouse" means either an individual who is divorced from an employee or former employee or an individual who was married to an employee or former

employee at the time of the death of the employee or former employee.

(g) 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. 5. Section 10116.5 is added to the Insurance Code, to read:

10116.5. (a) Every policy of disability insurance that is issued, amended, delivered, or renewed in this state on or after January 1, 1999, that provides hospital, medical, or surgical expense coverage under an employer-sponsored group plan for an employer subject to COBRA, as defined in subdivision (e), or an employer group for which the disability insurer is required to offer Cal-COBRA coverage, as defined in subdivision (f), including a carrier providing replacement coverage under Section 10128.3, shall further offer the former employee the opportunity to continue benefits as required under subdivision (b), and shall further offer the former spouse of an employee or former employee the opportunity to continue benefits as required under subdivision (c).

(b) (1) In the event a former employee who worked for the employer for at least five years prior to the date of termination of employment and who is 60 years of age or older on the date employment ends is entitled to and so elects to continue benefits under COBRA or Cal-COBRA for himself or herself and for any spouse, the employee or spouse may further continue benefits beyond the date coverage under COBRA or Cal-COBRA ends, as set forth in paragraph (2). Except as otherwise specified in this section, continuation coverage shall be under the same benefit terms and conditions as if the continuation coverage under COBRA or Cal-COBRA had remained in force. For the employee or spouse, continuation coverage following the end of COBRA or Cal-COBRA is subject to payment of premiums to the insurer. Individuals ineligible for COBRA or Cal-COBRA are not entitled to continuation coverage under this section. Premiums for continuation coverage under this section shall be billed by, and remitted to, the insurer in accordance with subdivision (d). Failure to pay the requisite premiums may result in termination of the continuation coverage in accordance with the applicable provisions in the insurer's group contract with the former employer.

(2) The former employer shall notify the former employee or spouse or both, or the former spouse of the employee or former employee, of the availability of the continuation benefits under this section in accordance with Section 2800.2 of the Labor Code. To continue health care coverage pursuant to this section, the individual shall elect to do so by notifying the insurer in writing within 30 calendar days prior to the date continuation coverage under COBRA or Cal-COBRA is scheduled to end.

(3) The continuation coverage shall end automatically on the earlier of (A) the date the individual reaches age 65, (B) the date the

individual is covered under any group health plan not maintained by the employer, regardless of whether that coverage is less valuable, (C) the date the individual becomes entitled to Medicare under Title XVIII of the Social Security Act, (D) for a spouse, five years from the date on which continuation coverage under COBRA or Cal-COBRA was scheduled to end for the spouse, or (E) the date on which the former employer terminates its group contract with the insurer and ceases to provide coverage for any active employees through that insurer, in which case the insurer shall notify the former employee or spouse or both of the right to a conversion policy.

(c) (1) If a former spouse of an employee or former employee was covered as a qualified beneficiary under COBRA or Cal-COBRA, the former spouse may further continue benefits beyond the date coverage under COBRA or Cal-COBRA ends, as set forth in paragraph (2) of subdivision (b). Except as otherwise specified in this section, continuation coverage shall be under the same benefit terms and conditions as if the continuation coverage under COBRA or Cal-COBRA had remained in force. Continuation coverage following the end of COBRA or Cal-COBRA is subject to payment of premiums to the insurer. Premiums for continuation coverage under this section shall be billed by, and remitted to, the insurer in accordance with subdivision (d). Failure to pay the requisite premiums may result in termination of the continuation coverage in accordance with the applicable provisions in the insurer's group contract with the employer or former employer.

(2) The continuation coverage for the former spouse shall end automatically on the earlier of (A) the date the individual reaches 65 years of age, (B) the date the individual is covered under any group health plan not maintained by the employer, regardless of whether that coverage is less valuable, (C) the date the individual becomes entitled to Medicare under Title XVIII of the Social Security Act, (D) five years from the date on which continuation coverage under COBRA or Cal-COBRA was scheduled to end for the former spouse, or (E) the date on which the employer or former employer terminates its group contract with the insurer and ceases to provide coverage for any active employees through that insurer, in which case the insurer shall notify the former spouse of the right to a conversion policy.

(d) (1) If the premium charged to the employer for a specific employee is adjusted for the age of the specific employee on other than a composite basis, the rate for continuation coverage under this section shall not exceed 102 percent of the premium charged by the insurer to the employer for an employee of the same age as the former employee electing continuation coverage. If the coverage continued is that of a former spouse, the premium charged shall not exceed 102 percent of the premium charged by the plan to the employer for an employee of the same age as the former spouse selecting continuation coverage.

(2) If the premium charged to the employer for a specific employee is not adjusted for age of the specific employee, then the rate for continuation coverage under this section shall not exceed 213 percent of the applicable current group rate. For purposes of this section, the "applicable current group rate" means the total premiums charged by the insurer for coverage for the group, divided by the relevant number of covered persons. However, in computing the premiums charged to the specific employer group, the insurer shall not include consideration of the specific medical care expenditures for beneficiaries receiving continuation coverage pursuant to this section.

(e) For purposes of this section, "COBRA" means Section 4980B of Title 26 of the United States Code, Section 1161 et seq. of Title 29 of the United States Code, and Section 300bb of Title 42 of the United States Code, as added by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272), and as amended.

(f) For purposes of this section, "Cal-COBRA" means the continuation coverage that must be offered pursuant to Article 1.7 (commencing with Section 10128.50), or Article 4.5 (commencing with Section 1366.20) of Chapter 2.2 of Division 2 of the Health and Safety Code.

(g) For the purposes of this section, "former spouse" means either an individual who is divorced from an employee or former employee or an individual who was married to an employee or former employee at the time of the death of the employee or former employee.

(h) This section shall take effect on January 1, 1999.

SEC. 6. Article 1.7 (commencing with Section 10128.50) is added to Chapter 1 of Part 2 of Division 2 of the Insurance Code, to read:

Article 1.7. California Cobra Program

10128.50. (a) This article shall be known as the California Continuation Benefits Replacement Act, or "Cal-COBRA."

(b) It is the intent of the Legislature that continued access to health insurance coverage is provided to employees, and their dependents, of employers with 2 to 19 eligible employees who are not currently offered continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985.

10128.51. (a) "Continuation coverage" means extended coverage under the group benefit plan under which an eligible employee is currently covered, or, in the case of a termination of the group benefit plan or an employer open enrollment period, extended coverage under the group benefit plan currently offered by the employer.

(b) "Group benefit plan" has the same meaning as "health benefit plan" defined in Section 10700, including group policies of vision-only and dental-only coverage, provided pursuant to Chapter 8

(commencing with Section 10700) to an employer with 2 to 19 eligible employees, as defined in Section 10700.

(c) "Qualified beneficiary" means any individual who, on the date of the qualifying event, is covered under a group benefit plan offered by a disability insurer pursuant to Article 1 (commencing with Section 10700) of Chapter 8.

(d) "Qualifying event" means any of the following events that, but for the election of continuation coverage under this article, would result in a loss of coverage under the group benefit plan to a qualified beneficiary:

(1) The death of the covered employee or insured.

(2) The termination or reduction of hours of the covered employee's or insured's employment, except that termination for gross misconduct does not constitute a qualifying event.

(3) The divorce or legal separation of the covered employee from the covered employee's spouse.

(4) The loss of dependent status by a dependent enrolled in the group benefit plan.

(5) With respect to a dependent only, the covered employee's or insured's eligibility for coverage under Title XVIII of the United States Social Security Act (Medicare).

(e) "Employer" means any employer that meets the definition of "small employer" as set forth in Section 10700 and (1) employs fewer than 20 eligible employees on at least 50 percent of its working days during the preceding calendar year, (2) has contracted for health care coverage through a group benefit plan offered by a disability insurer, and (3) is not subject to Section 4980B of the United States Internal Revenue Code or Chapter 18 of the Employee Retirement Income Security Act, 29 U.S.C. Section 1161 et seq.

10128.52. The continuation coverage requirements of this article do not apply to the following individuals:

(a) Individuals who are entitled or become entitled to coverage pursuant to Title XVIII of the United States Social Security Act (Medicare), as amended or superseded.

(b) Individuals who are covered or become covered under another group benefit plan, including a self-insured employee welfare benefit plan, that provides coverage for individuals and that does not impose any exclusion or limitation with respect to any preexisting condition of the individual, other than a preexisting condition limitation or exclusion that does not apply to or is satisfied by the qualified beneficiary pursuant to Sections 10198.6 and 10198.7. A group conversion option under any group benefit plan shall not be considered as an arrangement under which an individual beneficiary is or becomes covered.

(c) Individuals who are covered, become covered, or could become covered pursuant to Section 4980B of the United States Internal Revenue Code or Chapter 18 of the Employee Retirement Income Security Act, 29 U.S.C. Section 1161 et seq.

(d) Individuals who are covered, become covered, or could become covered pursuant to Chapter 6A of the Public Health Service Act, 42 U.S.C. Section 300bb-1 et seq.

(e) Qualified beneficiaries who fail to meet the requirements of subdivision (b) of Section 10128.55 regarding notification of a qualifying event or election of continuation coverage within the specified time limits.

(f) Qualified beneficiaries who fail to submit the correct premium amount required by subdivision (b) of Section 10128.55 and Section 10128.57, in accordance with the terms and conditions of the policy or contract.

10128.53. (a) Every group disability insurance contract or policy, including those policies and contracts that provide vision-only and dental-only benefits, that provides coverage under a group benefit plan to an employer, as defined in Section 10128.51, shall offer continuation coverage, pursuant to this section, to a qualified beneficiary under the contract upon a qualifying event without evidence of insurability. The qualified beneficiary shall, upon election, be able to continue his or her group benefit plan, subject to the contract's terms and conditions, and subject to the requirements of this article. Except as otherwise provided in this section, continuation coverage shall be provided under the same terms and conditions that apply to similarly situated individuals under the group benefit plan.

(b) Every disability insurer shall also offer the continuation coverage to a qualified beneficiary who (1) elects continuation coverage under a group benefit plan as defined in this article or in Section 1366.21 of the Health and Safety Code, but whose continuation coverage is terminated pursuant to subdivision (b) of Section 10128.57, prior to any other termination date specified in Section 10128.57, or (2) who elects coverage through the disability insurer during any employer open enrollment, and the employer has contracted with the disability insurer to provide coverage to the employer's active employees. This continuation coverage shall be provided only for the balance of the period that the qualified beneficiary would have remained covered under the prior group benefit plan and group service agreement had the employer not terminated the group service agreement or contract with the previous group benefit plan.

(c) A disability insurer that provides coverage for hospital, medical, and surgical care as well as coverage for dental and vision care shall not be required to offer to qualified beneficiaries continuation coverage for hospital, medical, and surgical care unless the disability insurer is the only health plan or disability insurer providing a group benefit plan to the employees of the employer. In no case shall a disability insurer that provides coverage for hospital, medical, and surgical care as well as coverage for dental and vision

care within a single group benefit plan be required to offer qualified beneficiaries continuation coverage for dental or vision care only.

(d) Any child who is born to a qualified beneficiary or who is placed for adoption with a qualified beneficiary during the period of continuation coverage provided by this article shall be entitled to receive benefits pursuant to this article, if the child is enrolled by the qualified beneficiary under a group benefit plan as a dependent of that beneficiary within 30 days of the child's birth or placement for adoption.

10128.54. (a) Every disability insurer shall disclose to policyholders or contractholders of group benefit plans subject to this article the ability to continue coverage pursuant to this article in the insurer's evidence of coverage.

(b) This disclosure shall state that all enrollees who are eligible to be qualified beneficiaries, as defined in subdivision (c) of Section 10128.51, shall be required, as a condition of receiving benefits pursuant to this article, to notify the insurer, or the employer if the employer contracts to perform the administrative services as provided for in Section 10128.55, of all qualifying events as specified in paragraphs (1), (3), (4), and (5) of subdivision (d) of Section 10128.51 within 60 days of the date of the qualifying event. This disclosure shall inform enrollees that failure to make the notification to the insurer, or to the employer when under contract to provide the administrative services, within the required 60 days will disqualify the qualified beneficiary from receiving continuation coverage pursuant to this article. The disclosure shall further state that a qualified beneficiary who wishes to continue coverage under the group benefit plan pursuant to this article must request the continuation in writing and deliver, by first-class mail, or other reliable means of delivery, including personal delivery, express mail, or private courier company, to the disability insurer, or to the employer if the plan has contracted with the employer for administrative services pursuant to subdivision (d) of Section 10128.55, within the 60-day period following the later of (1) the date of the qualifying event, (2) the date the qualified beneficiary is given notice pursuant to subdivision (d) of Section 10128.55 of the ability to continue coverage under the group benefit plan by either the insurer or his or her employer, or (3) the date coverage under the employer's group benefit plan terminates. The disclosure required by this section shall also state that a qualified beneficiary electing continuation shall pay to the disability insurer, in accordance with the terms and conditions of the policy or contract, which shall be set forth in the notice to the qualified beneficiary pursuant to subdivision (d) of Section 10128.55, the amount of the required premium payment, as set forth in Section 10128.56. The disclosure shall further require that the qualified beneficiary's first premium payment required to establish premium payment be delivered by certified mail or other reliable means of delivery, including personal delivery, express mail,

or private courier company, to the disability insurer, or to the employer if the employer has contracted with the insurer to perform the administrative services pursuant to subdivision (d) of Section 10128.55, within 45 days of the date the qualified beneficiary provided written notice to the insurer or the employer, if the employer has contracted to perform the administrative services, of the election to continue coverage in order for coverage to be continued under this article. This disclosure shall also state that the first premium payment must equal an amount sufficient to pay all required premiums and all premiums due, and that failure to submit the correct premium amount within the 45-day period will disqualify the qualified beneficiary from receiving continuation coverage pursuant to this article.

(c) The disclosure required by this section shall also describe separately how qualified beneficiaries whose continuation coverage terminates under a prior group benefit plan pursuant to Section 10128.57 may continue their coverage for the balance of the period that the qualified beneficiary would have remained covered under the prior group benefit plan, including the requirements for election and payment. The disclosure shall clearly state that continuation coverage shall terminate if the qualified beneficiary fails to comply with the requirements pertaining to enrollment in, and payment of premiums to, the new group benefit plan within 30 days of receiving notice of the termination of the prior group benefit plan.

(d) Every group benefit plan evidence of coverage that is issued, amended, or renewed after January 1, 1999, shall contain the information required by this section. Prior to January 1, 1999, insurers shall provide to all qualified beneficiaries identified by the employer pursuant to subdivision (a) of Section 10128.55 a written notice containing the information required by this section.

(e) Every disclosure form issued, amended, or renewed on and after January 1, 1999, for a group benefit plan subject to this article shall provide a notice that, under state law, an insured or eligible family member may be entitled to continuation of group coverage and that additional information regarding eligibility for this coverage may be found in the evidence of coverage.

10128.55. (a) Every group benefit plan contract between a disability insurer and an employer subject to this article shall require the employer to notify the insurer of any employee who has had a qualifying event, as defined in paragraph (2) of subdivision (d) of Section 10128.51, within 31 days of the qualifying event.

(b) Every group benefit plan contract between a disability insurer and an employer shall require the employer to notify qualified beneficiaries currently receiving continuation coverage, whose continuation coverage will terminate under one group benefit plan prior to the end of the period the qualified beneficiary would have remained covered, as specified in Section 10128.57 a minimum of 30 days prior to the termination, of the qualified beneficiary's ability to

continue coverage under a new group benefit plan for the balance of the period the qualified beneficiary would have remained covered under the prior group benefit plan. Notwithstanding subdivision (a), the group benefit plan contract between the insurer and the employer shall require the employer to provide to a qualified beneficiary subject to this section the necessary benefits information, premium information, enrollment forms, and instructions consistent with the disclosure required by subdivision (c) of Section 10128.54 to allow the qualified beneficiary to continue coverage. This information shall be sent to the qualified beneficiary's last known address, as provided by the health care service plan, disability insurer, or self-funded employee welfare benefit plan currently providing continuation coverage to the qualified beneficiary.

(c) A disability insurer may contract with an employer, or an administrator, to perform the administrative requirements of this article, including required notifications and collecting and forwarding premiums to the insurer.

(d) Every insurer, or employer that contracts to perform the notice and administrative services pursuant to this section, shall, within 14 days of receiving a notice of a qualifying event, provide to the qualified beneficiary the necessary benefits information, premium information, enrollment forms, and instructions consistent with the notice requirements contained in subdivisions (b) and (c) of Section 10128.54 to allow the qualified beneficiary to formally elect continuation coverage. This information shall be sent to the qualified beneficiary's last known address.

10128.56. A qualified beneficiary electing continuation coverage shall pay to the disability insurer, on or before the due date of each payment but not more frequently than on a monthly basis, not more than 110 percent of the applicable rate charged for a covered employee or, in the case of dependent coverage, not more than 110 percent of the applicable rate charged to a similarly situated individual under the group benefit plan being continued under the group contract. In the case of a qualified beneficiary who is determined to be disabled pursuant to Title II or Title XVI of the United States Social Security Act, the qualified beneficiary shall be required to pay to the insurer an amount no greater than 150 percent of the group rate after the first 18 months of continuation coverage provided pursuant to this section.

10128.57. (a) The continuation coverage provided pursuant to this article shall terminate at the first to occur of the following:

(1) In the case of a qualified beneficiary who is eligible for continuation coverage pursuant to paragraph (2) of subdivision (d) of Section 10128.51, the date 18 months after the date the qualified beneficiary's benefits under the contract would otherwise have terminated because of a qualifying event.

(2) The end of the period for which premium payments were made, if the qualified beneficiary ceases to make payments or fails to

make timely payments of a required premium, in accordance with the terms and conditions of the policy or contract. In the case of nonpayment of premiums, reinstatement shall be governed by the terms and conditions of the plan contract.

(3) In the case of a qualified beneficiary who is eligible pursuant to paragraph (1), (3), (4), or (5) of subdivision (d) of Section 10116.51, the date 36 months after the date the qualified beneficiary's benefits under the contract would otherwise have terminated by reason of a qualifying event or the employee's becoming entitled to benefits under Title XVIII of the United States Social Security Act.

(4) The requirements of this article no longer apply to the qualified beneficiary pursuant to the provisions of Section 10128.52.

(5) In the case of a qualified beneficiary who is eligible for continuation coverage pursuant to Section 10128.51, and determined, under Title II or Title XVI of the Social Security Act, to be disabled at the time of termination of employment or eligibility or within 60 days afterward, the date 29 months after the date the qualified beneficiary's benefits under the contract would otherwise have terminated because of a qualifying event. If the qualified beneficiary is no longer disabled under Title II or Title XVI of the Social Security Act, the benefits provided in this paragraph shall terminate on the later of the date provided by paragraph (1), or the month that begins more than 31 days after the date of the final determination under Title II or Title XVI of the United States Social Security Act that the qualified beneficiary is no longer disabled.

(6) The employer, or any successor employer or purchaser of the employer, ceases to provide any group benefit plan to his or her employees.

(b) If the group service agreement between the insurer and the employer is terminated prior to the date the qualified beneficiary's continuation coverage would terminate pursuant to this section, the qualified beneficiary may elect continuation coverage under the subsequent group benefit plan, if any, pursuant to the requirements of subdivision (b) of Section 10128.53 and subdivision (c) of Section 10128.54.

10128.58. A disability insurer subject to this article shall not be obligated to provide continuation coverage to a qualified beneficiary pursuant to this article if an enrollee fails to make the notification required by Section 10128.54, or if the employer of the enrollee fails to comply with Section 10128.55.

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 666

An act to amend Sections 654, 654.05, 654.06, 655.3, and 668 of the Harbors and Navigation Code, and to amend Section 256 of the Welfare and Institutions Code, relating to vessels.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 654 of the Harbors and Navigation Code is amended to read:

654. The exhaust of every internal combustion engine used on any motorized recreational vessel shall be effectively muffled at all times to prevent any excessive or unusual noise and as may be necessary to comply with Section 654.05.

This section does not apply to motorized recreational vessels competing under a local public entity or United States Coast Guard permit in a regatta, in a boat race, while on trial runs, or while on official trials for speed records during the time and in the designated area authorized by the permit. In addition, this section does not apply to motorized recreational vessels preparing for a race or regatta if authorized by a permit issued by the local entity having jurisdiction over the area where the preparations occur.

SEC. 2. Section 654.05 of the Harbors and Navigation Code is amended to read:

654.05. (a) No person shall operate any motorized recreational vessel in or upon the inland waters of this state in a manner that exceeds the following noise levels:

(1) For engines manufactured before January 1, 1976, a noise level of 86 dbA measured at a distance of 50 feet from the motorized recreational vessel.

(2) For engines manufactured on or after January 1, 1976, and before January 1, 1978, a noise level of 84 dbA measured at a distance of 50 feet from the motorized recreational vessel.

(3) For engines manufactured on or after January 1, 1978, a noise level of 82 dbA measured at a distance of 50 feet from the motorized recreational vessel.

(b) Testing procedures employed to determine noise levels shall be in accordance with the Exterior Sound Level Measurement Procedure For Pleasure Motorboats of the Society of Automotive

Engineers in its recommended practice designated SAE J34. The department may, by regulation, revise the measurement procedure when deemed necessary to adjust to advances in technology.

(c) This section does not apply to motorized recreational vessels competing under a local public entity or United States Coast Guard permit in a regatta, in a boat race, while on trial runs, or while on official trials for speed records during the time and in the designated area authorized by the permit. In addition, this section does not apply to motorized recreational vessels preparing for a race or regatta if authorized by a permit issued by the local entity having jurisdiction over the area where the preparations occur.

SEC. 3. Section 654.06 of the Harbors and Navigation Code is amended to read:

654.06. No person shall sell or offer for sale at retail any internal combustion engine for use on any motorized recreational vessel which, when operated, exceeds the following noise levels:

(a) For engines manufactured on or after January 1, 1974, and before January 1, 1976, a noise level of 86 dbA measured at a distance of 50 feet from the motorized recreational vessel.

(b) For engines manufactured on or after January 1, 1976, and before January 1, 1978, a noise level of 84 dbA measured at a distance of 50 feet from the motorized recreational vessel.

(c) For engines manufactured on or after January 1, 1978, a noise level of 82 dbA measured at a distance of 50 feet from the motorized recreational vessel.

SEC. 4. Section 655.3 of the Harbors and Navigation Code is amended to read:

655.3. The department may adopt regulations to establish and maintain for the use of vessels and the equipment on vessels on the waters of this state rules of the road and pilot rules in conformity with those contained in the federal navigation laws or the navigation rules promulgated by the United States Coast Guard.

SEC. 5. Section 668 of the Harbors and Navigation Code is amended to read:

668. (a) Any person who violates subdivision (c) of Section 652, Section 654, 654.05, 654.06, 658.3, 659, 673, 674, or 754, or any regulations adopted pursuant thereto, or any regulation adopted pursuant to Section 655.3 relating to vessel equipment requirements, is guilty of an infraction, punishable by a fine of not more than two hundred fifty dollars ($250).

(b) (1) Any person who violates Section 655.2 or any regulation adopted pursuant thereto, or, except as provided in subdivision (a), any regulation adopted pursuant to Section 655.3, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars ($100) or imprisonment in the county jail for not more than five days, or by both that fine and imprisonment, for each violation.

(2) Any person who violates subdivision (a) or (b) of Section 658 is guilty of a misdemeanor and shall be punished by a fine of not more than two hundred dollars ($200) for each violation.

(3) Any person who violates subdivision (d) of Section 652, Section 652.5, subdivision (a) of Section 655, Section 655.05, 656, or 656.1, subdivision (d) or (e) of Section 658, Section 663.6 or 665, or any rules and regulations adopted pursuant to subdivision (b) or (c) of Section 660, is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than six months, or by both that fine and imprisonment, for each violation.

(c) Any person convicted of a first violation of subdivision (b), (c), (d), or (e) of Section 655, or of a violation of Section 655.4, shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than six months, or by both that fine and imprisonment. If probation is granted, the court may, as a condition of probation, require the person to participate in, and successfully complete, an alcohol or drug education, training, or treatment program, in addition to imposing any penalties required by this code. In order to enable all persons to participate in licensed programs, every person referred to a program licensed pursuant to Section 11836 of the Health and Safety Code shall pay that program's costs commensurate with that person's ability to pay as determined by Section 11837.4 of the Health and Safety Code.

(d) Any person convicted of a second or subsequent violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of the first conviction of any of those subdivisions or subdivision (f) of Section 655, or any person convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of a separate conviction of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a vessel, or a separate conviction of Section 23152 or 23153 of the Vehicle Code or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. If probation is granted, the court may, as a condition of probation, require the person to do either of the following, if available in the county of the person's residence or employment:

(1) Participate, for at least 18 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, as designated by the court. In order to enable all required persons to participate, each person shall pay the program costs commensurate

with the persons ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code.

(2) 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. A person ordered to treatment pursuant to this paragraph 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. 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 paragraph is a basis for reducing any other probation requirement.

(e) Any person convicted of a violation of subdivision (f) of Section 655 shall be punished by imprisonment in the state prison, or in the county jail for not less than 90 days or more than one year, and by a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000). If probation is granted, the court may, as a condition of probation, require the person to participate in, and successfully complete, 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 person's county of residence or employment, as designated by the court. 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.

(f) (1) If any person is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (b), (c), (d), or (e) of Section 655 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for not less than five days or more than one year and pay a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000).

(2) If any person is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (f) of Section 655, of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, and is granted probation, the court

shall impose as a condition of probation that the person be confined in the county jail for not less than 90 days or more than one year, and pay a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000), and the court may order, as a condition of probation, that the person participate 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. 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.

(g) The court shall not absolve a person who is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (b), (c), (d), (e), or (f) of Section 655, of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, from the minimum time in confinement provided in this section and a fine of at least two hundred fifty dollars ($250), except as provided in subdivision (h).

(h) Except in unusual cases where the interests of justice demand an exception, the court shall not strike a separate conviction of an offense under subdivision (b), (c), (d), (e), or (f) of Section 655 or of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, for purposes of sentencing in order to avoid imposing, as part of the sentence or as a term of probation, the minimum time in confinement and the minimum fine, as provided in this section. When a separate conviction is stricken by the court for purposes of sentencing, the court shall specify the reason or reasons for the striking order. On appeal by the people from an order striking a separate conviction, it shall be conclusively presumed that the order was made only for the reasons specified in the order, and the order shall be reversed if there is no substantial basis in the record for any of those reasons.

(i) Any person convicted of a violation of Section 656.2 or 656.3 shall be punished by a fine of not more than ten thousand dollars ($10,000) or imprisonment in the state prison or in the county jail for not more than one year, or by both that fine and imprisonment.

(j) Any person convicted of a violation of Section 658.5 shall be punished by a fine of not more than one hundred dollars ($100).

SEC. 5.2. Section 668 of the Harbors and Navigation Code is amended to read:

668. (a) Any person who violates subdivision (c) of Section 652, Section 654, 654.05, 654.06, 655.7, 658.3, 659, 673, 674, or 754, or any regulations adopted pursuant thereto, or any regulation adopted pursuant to Section 655.3 relating to vessel equipment requirements, is guilty of an infraction, punishable by a fine of not more than two hundred fifty dollars ($250).

(b) (1) Any person who violates Section 655.2 or any regulation adopted pursuant thereto, or, except as provided in subdivision (a), any regulation adopted pursuant to Section 655.3, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars ($100) or imprisonment in the county jail for not more than five days, or by both that fine and imprisonment, for each violation.

(2) Any person who violates subdivision (a) or (b) of Section 658 is guilty of a misdemeanor and shall be punished by a fine of not more than two hundred dollars ($200) for each violation.

(3) Any person who violates subdivision (d) of Section 652, Section 652.5, subdivision (a) of Section 655, Section 655.05, 656, or 656.1, subdivision (d) or (e) of Section 658, Section 663.6 or 665, or any rules and regulations adopted pursuant to subdivision (b) or (c) of Section 660, is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than six months, or by both that fine and imprisonment, for each violation.

(c) Any person convicted of a violation of Section 656.2 or 656.3 shall be punished by a fine of not more than ten thousand dollars ($10,000) or imprisonment in the state prison or in the county jail for not more than one year, or by both that fine and imprisonment.

(d) Any person convicted of a violation of Section 658.5 shall be punished by a fine of not more than one hundred dollars ($100).

(e) Any person convicted of a first violation of subdivision (b), (c), (d), or (e) of Section 655, or of a violation of Section 655.4, shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than six months, or by both that fine and imprisonment. If probation is granted, the court, as a condition of probation, may require the person to participate in, and successfully complete, an alcohol or drug education, training, or treatment program, in addition to imposing any penalties required by this code. In order to enable all persons to participate in licensed programs, every person referred to a program licensed pursuant to Section 11836 of the Health and Safety Code shall pay that program's costs commensurate with that person's ability to pay as determined by Section 11837.4 of the Health and Safety Code.

(f) Any person convicted of a second or subsequent violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of the first conviction of any of those subdivisions or subdivision (f) of

Section 655, or any person convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of a separate conviction of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a vessel, or a separate conviction of Section 23152 or 23153 of the Vehicle Code or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. If probation is granted, the court, as a condition of probation, may require the person to do either of the following, if available in the county of the person's residence or employment:

(1) Participate, for at least 18 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, as designated by the court. 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.

(2) 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. A person ordered to treatment pursuant to this paragraph 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. 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 paragraph is a basis for reducing any other probation requirement.

(g) Any person convicted of a violation of subdivision (f) of Section 655 shall be punished by imprisonment in the state prison, or in the county jail for not less than 90 days or more than one year, and by a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000). If probation is granted, the court, as a condition of probation, may require the person to participate in, and successfully complete, 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 person's county of residence or employment, as designated by the court. 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.

(h) (1) If any person is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (b), (c), (d), or (e) of Section 655 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for not less than five days or more than one year and pay a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000).

(2) If any person is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (f) of Section 655, of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for not less than 90 days or more than one year, and pay a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000), and the court may order, as a condition of probation, that the person participate 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. 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.

(i) The court shall not absolve a person who is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (b), (c), (d), (e), or (f) of Section 655, of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, from the minimum time in confinement provided in this section and a fine of at least two hundred fifty dollars ($250), except as provided in subdivision (h).

(j) Except in unusual cases where the interests of justice demand an exception, the court shall not strike a separate conviction of an offense under subdivision (b), (c), (d), (e), or (f) of Section 655 or of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, or

Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, for purposes of sentencing in order to avoid imposing, as part of the sentence or as a term of probation, the minimum time in confinement and the minimum fine, as provided in this section. When a separate conviction is stricken by the court for purposes of sentencing, the court shall specify the reason or reasons for the striking order. On appeal by the people from an order striking a separate conviction, it shall be conclusively presumed that the order was made only for the reasons specified in the order, and the order shall be reversed if there is no substantial basis in the record for any of those reasons.

SEC. 5.4. Section 668 of the Harbors and Navigation Code is amended to read:

668. (a) Any person who violates subdivision (c) of Section 652, Section 654, 654.05, 654.06, 658.3, 659, 673, 674, or 754, or any regulations adopted pursuant thereto, or any regulation adopted pursuant to Section 655.3 relating to vessel equipment requirements, is guilty of an infraction, punishable by a fine of not more than two hundred fifty dollars ($250).

(b) (1) Any person who violates Section 655.2 or any regulation adopted pursuant thereto, or, except as provided in subdivision (a), any regulation adopted pursuant to Section 655.3, is guilty of a misdemeanor, punishable by a fine of not more than one hundred dollars ($100) or imprisonment in a county jail for not more than five days, or by both that fine and imprisonment, for each violation.

(2) Any person who violates subdivision (a) or (b) of Section 658 is guilty of a misdemeanor, punishable by a fine of not more than two hundred dollars ($200) for each violation.

(3) Any person who violates subdivision (d) of Section 652, Section 652.5, subdivision (a) of Section 655, Section 655.05, 656, or 656.1, subdivision (d) or (e) of Section 658, Section 663.6 or 665, or any rules and regulations adopted pursuant to subdivision (b) or (c) of Section 660, is guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars ($1,000) or imprisonment in a county jail for not more than six months, or by both that fine and imprisonment, for each violation.

(c) Any person convicted of a first violation of subdivision (b), (c), (d), or (e) of Section 655, or of a violation of Section 655.4, shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in a county jail for not more than six months, or by both that fine and imprisonment. If probation is granted, the court, as a condition of probation, may require the person to participate in, and successfully complete, an alcohol or drug education, training, or treatment program, in addition to imposing any penalties required by this code. In order to enable all persons to participate in licensed programs, every person referred to a program licensed pursuant to

Section 11836 of the Health and Safety Code shall pay that program's costs commensurate with that person's ability to pay as determined by Section 11837.4 of the Health and Safety Code.

(d) Any person convicted of a second or subsequent violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of the first conviction of any of those subdivisions or subdivision (f) of Section 655, or any person convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of a separate conviction of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a vessel, or a separate conviction of Section 23152 or 23153 of the Vehicle Code or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. If probation is granted, the court, as a condition of probation, may require the person to do either of the following, if available in the county of the person's residence or employment:

(1) Participate, for at least 18 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, as designated by the court. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the persons ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code.

(2) 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. A person ordered to treatment pursuant to this paragraph 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. 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 paragraph is a basis for reducing any other probation requirement.

(e) Any person convicted of a violation of subdivision (f) of Section 655 shall be punished by imprisonment in the state prison or in a county jail for not less than 90 days or more than one year, and by a fine of not less than two hundred fifty dollars ($250) or more than

five thousand dollars ($5,000). If probation is granted, the court, as a condition of probation, may require the person to participate in, and successfully complete, 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 person's county of residence or employment, as designated by the court. 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.

(f) (1) If any person is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (b), (c), (d), or (e) of Section 655 and is granted probation, the court shall impose as a condition of probation that the person be confined in a county jail for not less than five days or more than one year and pay a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000).

(2) If any person is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (f) of Section 655, of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, and is granted probation, the court shall impose as a condition of probation that the person be confined in a county jail for not less than 90 days or more than one year, and pay a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000), and the court, as a condition of probation, may order that the person participate 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. 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.

(g) The court shall not absolve a person who is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (b), (c), (d), (e), or (f) of Section 655, of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, from the minimum time in confinement provided in this section and a fine of at least two hundred fifty dollars ($250), except as provided in subdivision (h).

(h) Except in unusual cases where the interests of justice demand an exception, the court shall not strike a separate conviction of an offense under subdivision (b), (c), (d), (e), or (f) of Section 655 or of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, for purposes of sentencing in order to avoid imposing, as part of the sentence or as a term of probation, the minimum time in confinement and the minimum fine, as provided in this section. When a separate conviction is stricken by the court for purposes of sentencing, the court shall specify the reason or reasons for the striking order. On appeal by the people from an order striking a separate conviction, it shall be conclusively presumed that the order was made only for the reasons specified in the order, and the order shall be reversed if there is no substantial basis in the record for any of those reasons.

(i) Any person convicted of a violation of Section 656.2 or 656.3 shall be punished by a fine of not more than ten thousand dollars ($10,000) or imprisonment in the state prison or in a county jail for not more than one year, or by both that fine and imprisonment.

(j) Any person convicted of a violation of Section 658.5 or 658.6 shall be punished by a fine of not more than one hundred dollars ($100).

SEC. 5.6. Section 668 of the Harbors and Navigation Code is amended to read:

668. (a) Any person who violates subdivision (c) of Section 652, Section 654, 654.05, 654.06, 655.7, 658.3, 659, 673, 674, or 754, or any regulations adopted pursuant thereto, or any regulation adopted pursuant to Section 655.3 relating to vessel equipment requirements, is guilty of an infraction, punishable by a fine of not more than two hundred fifty dollars ($250).

(b) (1) Any person who violates Section 655.2 or any regulation adopted pursuant thereto, or, except as provided in subdivision (a), any regulation adopted pursuant to Section 655.3, is guilty of a misdemeanor, punishable by a fine of not more than one hundred dollars ($100) or imprisonment in a county jail for not more than five days, or by both that fine and imprisonment, for each violation.

(2) Any person who violates subdivision (a) or (b) of Section 658 is guilty of a misdemeanor, punishable by a fine of not more than two hundred dollars ($200) for each violation.

(3) Any person who violates subdivision (d) of Section 652, Section 652.5, subdivision (a) of Section 655, Section 655.05, 656, or 656.1, subdivision (d) or (e) of Section 658, Section 663.6 or 665, or any rules and regulations adopted pursuant to subdivision (b) or (c) of Section 660, is guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars ($1,000) or imprisonment in a county

jail for not more than six months, or by both that fine and imprisonment, for each violation.

(c) Any person convicted of a violation of Section 656.2 or 656.3 shall be punished by a fine of not more than ten thousand dollars ($10,000) or imprisonment in the state prison or in a county jail for not more than one year, or by both that fine and imprisonment.

(d) Any person convicted of a violation of Section 658.5 or 658.6 shall be punished by a fine of not more than one hundred dollars ($100).

(e) Any person convicted of a first violation of subdivision (b), (c), (d), or (e) of Section 655, or of a violation of Section 655.4, shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in a county jail for not more than six months, or by both that fine and imprisonment. If probation is granted, the court, as a condition of probation, may require the person to participate in, and successfully complete, an alcohol or drug education, training, or treatment program, in addition to imposing any penalties required by this code. In order to enable all persons to participate in licensed programs, every person referred to a program licensed pursuant to Section 11836 of the Health and Safety Code shall pay that program's costs commensurate with that person's ability to pay as determined by Section 11837.4 of the Health and Safety Code.

(f) Any person convicted of a second or subsequent violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of the first conviction of any of those subdivisions or subdivision (f) of Section 655, or any person convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of a separate conviction of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a vessel, or a separate conviction of Section 23152 or 23153 of the Vehicle Code or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in a county jail for not more than one year, or by both that fine and a imprisonment. If probation is granted, the court, as a condition of probation, may require the person to do either of the following, if available in the county of the person's residence or employment:

(1) Participate, for at least 18 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, as designated by the court. 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.

(2) 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. A person ordered to treatment pursuant to this paragraph 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. 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 paragraph is a basis for reducing any other probation requirement.

(g) Any person convicted of a violation of subdivision (f) of Section 655 shall be punished by imprisonment in the state prison, or in a county jail for not less than 90 days or more than one year, and by a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000). If probation is granted, the court, as a condition of probation, may require the person to participate in, and successfully complete, 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 person's county of residence or employment, as designated by the court. 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.

(h) (1) If any person is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (b), (c), (d), or (e) of Section 655 and is granted probation, the court shall impose as a condition of probation that the person be confined in a county jail for not less than five days or more than one year and pay a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000).

(2) If any person is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (f) of Section 655, of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, and is granted probation, the court shall impose as a condition of probation that the person be confined in a county jail for not less than 90 days or more than one year, and pay a fine of not less than two hundred fifty dollars ($250) or more

than five thousand dollars ($5,000), and the court, as a condition of probation, may order that the person participate 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. 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.

(i) The court shall not absolve a person who is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (b), (c), (d), (e), or (f) of Section 655, of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, from the minimum time in confinement provided in this section and a fine of at least two hundred fifty dollars ($250), except as provided in subdivision (h).

(j) Except in unusual cases where the interests of justice demand an exception, the court shall not strike a separate conviction of an offense under subdivision (b), (c), (d), (e), or (f) of Section 655 or of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, for purposes of sentencing in order to avoid imposing, as part of the sentence or as a term of probation, the minimum time in confinement and the minimum fine, as provided in this section. When a separate conviction is stricken by the court for purposes of sentencing, the court shall specify the reason or reasons for the striking order. On appeal by the people from an order striking a separate conviction, it shall be conclusively presumed that the order was made only for the reasons specified in the order, and the order shall be reversed if there is no substantial basis in the record for any of those reasons.

SEC. 6. Section 256 of the Welfare and Institutions Code is amended to read:

256. Subject to the orders of the juvenile court, a traffic hearing officer may hear and dispose of any case in which a minor under the age of 18 years as of the date of the alleged offense is charged with (1) any violation of the Vehicle Code not declared to be a felony, (2) a violation of subdivision (m) of Section 602 of the Penal Code, (3) a violation of the Fish and Game Code not declared to be a felony, (4) a violation of any of the equipment provisions of the Harbors and Navigation Code or the vessel registration provisions of the Vehicle

Code, (5) a violation of any provision of state or local law relating to traffic offenses, loitering or curfew, or evasion of fares on a public transportation system, as defined by Section 99211 of the Public Utilities Code, (6) a violation of Section 27176 of the Streets and Highways Code, (7) a violation of Section 640 or 640a of the Penal Code, (8) a violation of the rules and regulations established pursuant to Sections 5003 and 5008 of the Public Resources Code, (9) a violation of Section 33211.6 of the Public Resources Code, (10) a violation of Section 25658, 25658.5, 25661, or 25662 of the Business and Professions Code, (11) a violation of subdivision (f) of Section 647 of the Penal Code, (12) a misdemeanor violation of Section 594 of the Penal Code, involving defacing property with paint or any other liquid, (13) a violation of subdivision (b), (d), or (e) of Section 594.1 of the Penal Code, (14) a violation of subdivision (b) of Section 11357 of the Health and Safety Code, or (15) any infraction.

SEC. 6.5. Section 256 of the Welfare and Institutions Code is amended to read:

256. Subject to the orders of the juvenile court, a juvenile hearing officer may hear and dispose of any case in which a minor under the age of 18 years as of the date of the alleged offense is charged with (1) any violation of the Vehicle Code not declared to be a felony, (2) a violation of subdivision (m) of Section 602 of the Penal Code, (3) a violation of the Fish and Game Code not declared to be a felony, (4) a violation of any of the equipment provisions of the Harbors and Navigation Code or the vessel registration provisions of the Vehicle Code, (5) a violation of any provision of state or local law relating to traffic offenses, loitering or curfew, or evasion of fares on a public transportation system, as defined by Section 99211 of the Public Utilities Code, (6) a violation of Section 27176 of the Streets and Highways Code, (7) a violation of Section 640 or 640a of the Penal Code, (8) a violation of the rules and regulations established pursuant to Sections 5003 and 5008 of the Public Resources Code, (9) a violation of Section 33211.6 of the Public Resources Code, (10) a violation of Section 25658, 25658.5, 25661, or 25662 of the Business and Professions Code, (11) a violation of subdivision (f) of Section 647 of the Penal Code, (12) a misdemeanor violation of Section 594 of the Penal Code, involving defacing property with paint or any other liquid, (13) a violation of subdivision (b), (d), or (e) of Section 594.1 of the Penal Code, (14) a violation of subdivision (b) of Section 11357 of the Health and Safety Code, (15) any infraction, or (16) any misdemeanor for which the minor is cited to appear by a probation officer pursuant to subdivision (f) of Section 660.5.

SEC. 7. Section 5.2 of this bill incorporates amendments to Section 668 of the Harbors and Navigation Code proposed by both this bill and SB 347. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1998, (2) each bill amends Section 668 of the Harbors and Navigation Code, (3) SB 545 is not enacted or as enacted does not amend that section, and (4) this

bill is enacted after SB 347, in which case Sections 5, 5.4, and 5.6 of this bill shall not become operative.

SEC. 8. Section 5.4 of this bill incorporates amendments to Section 668 of the Harbors and Navigation Code proposed by both this bill and SB 545. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1998, (2) each bill amends Section 668 of the Harbors and Navigation Code, (3) SB 347 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 545, in which case Sections 5, 5.2, and 5.6 of this bill shall not become operative.

SEC. 9. Section 5.6 of this bill incorporates amendments to Section 668 of the Harbors and Navigation Code proposed by this bill, SB 347, and SB 545. It shall only become operative if (1) all three bills are enacted and become effective on January 1, 1998, (2) each bill amends Section 668 of the Harbors and Navigation Code, and (3) this bill is enacted after SB 347 and SB 545, in which case Sections 5, 5.2, and 5.4 of this bill shall not become operative.

SEC. 10. Section 6.5 of this bill incorporates amendments to Section 256 of the Welfare and Institutions Code proposed by both this bill and AB 1105. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1998, (2) each bill amends Section 256 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1105, in which case Section 6 of this bill shall not become operative.

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 667

An act to amend Section 10789 of the Revenue and Taxation Code, and to amend Section 9107 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 10789 of the Revenue and Taxation Code is amended to read:

10789. The license fee imposed by this part does not apply to the following:

(a) Any vehicle purchased with federal funds under the authority of paragraph (2) of subsection (b) of Section 1612 of Title 49 of the United States Code or Chapter 35 (commencing with Section 3000) of Title 42 of the United States Code for the purpose of providing specialized transportation services to senior citizens and handicapped persons by public and private nonprofit operators of specialized transportation services, including a consolidated transportation service agency designated pursuant to Section 15975 of the Government Code.

(b) Any vehicle operated solely for the purpose of providing specialized transportation services to senior citizens and persons with disabilities, by a nonprofit, public benefit consolidated transportation service agency designated under Section 15975 of the Government Code. The exemption provided by this subdivision shall not apply to more than 600 vehicles at any given time.

SEC. 2. Section 9107 of the Vehicle Code is amended to read:

9107. The weight fees for commercial vehicles specified in Section 9400 do not apply to any of the following:

(a) Any vehicle operated by a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, which is subject to the jurisdiction of the Public Utilities Commission, if both of the following conditions are met:

(1) When the vehicle is operated exclusively on any line or lines having a one-way route mileage not exceeding 15 miles, and if each of those lines is operated in either of the following areas:

(A) In urban or suburban areas or between cities in close proximity.

(B) Between nonadjacent urban or suburban areas or cities, the area between which is substantially residential, commercial, or industrial as distinguished from rural.

(2) When the principal business of the passenger stage corporation is the operation of vehicles on a route or routes as defined in paragraph (1) of this subdivision.

(b) Any vehicle operated exclusively on any line or lines within the limits of a single city by a person engaged as a common carrier of passengers between fixed termini or over a regular route, 98 percent of whose operations, as measured by total route mileage operated, are exclusively within the limits of a single city, and who by reason thereof is not a passenger state corporation subject to the jurisdiction of the Public Utilities Commission.

(c) Vanpool vehicles.

(d) Any vehicle purchased with federal funds under the authority of paragraph (2) of subsection (b) of Section 1612 of Title 49 of the United States Code or Chapter 35 (commencing with Section 3001) of Title 42 of the United States Code for the purpose of providing specialized transportation services to senior citizens and handicapped persons by public and private nonprofit operators of specialized transportation service agencies.

(e) Any vehicle operated solely for the purpose of providing specialized transportation services to senior citizens and persons with disabilities, by a nonprofit, public benefit consolidated transportation service agency designated under Section 15975 of the Government Code.

CHAPTER 668

An act to amend Section 69535 of the Education Code, relating to postsecondary education.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 69535 of the Education Code is amended to read:

69535. (a) Cal Grant Program awards shall be based upon the financial need of the applicant. The level of financial need of each applicant shall be determined by the commission pursuant to Article 1.5 (commencing with Section 69503).

(b) For the applicants so qualifying, academic criteria or criteria related to past performances shall be utilized as the criteria in determining eligibility for grants.

(c) All Cal Grant Program award recipients shall be residents of California, as determined by the commission pursuant to Part 41 (commencing with Section 68000), and shall remain eligible only if they are in attendance and making satisfactory progress through the instructional programs, as determined by the commission.

(d) Part-time students shall not be discriminated against in the selection of Cal Grant Program award recipients, and awards to part-time students shall be roughly proportional to the time spent in the instructional program, as determined by the commission. First-time Cal Grant Program award recipients who are part-time students shall be eligible for a full-time renewal award.

(e) Cal Grant Program awards shall be awarded without regard to race, religion, creed, sex, or age.

(f) No applicant shall receive more than one type of Cal Grant Program award concurrently. Except as provided in subdivisions (b) and (c) of Section 69535.1, no applicant shall:

(1) Receive one or a combination of Cal Grant Program awards in excess of a total of four years of full-time attendance in an undergraduate program.

(2) Have obtained a baccalaureate degree prior to receiving a Cal Grant Program award.

(g) Cal Grant Program awards, except as provided in subdivision (c) of Section 69535.1, may only be used for educational expenses of a program of study leading directly to an undergraduate degree or certificate, or for expenses of undergraduate coursework in a program of study leading directly to a first professional degree, but for which no baccalaureate degree is awarded.

(h) Commencing in 1999, the commission shall, for students who accelerate college attendance, increase the amount of award proportional to the period of additional attendance resulting from attendance in classes that fulfill requirements or electives for graduation during summer terms, sessions, or quarters. In the aggregate, the total amount a student may receive in a four-year period may not be increased as a result of accelerating his or her progress to a degree by attending summer terms, sessions, or quarters.

(i) The commission shall notify Cal Grant award recipients of the availability of funding for the summer term, session, or quarter through prominent notice in financial aid award letters, materials, guides, electronic information, and other means that may include, but not be limited to, surveys, newspaper articles, or attachments to communications from the commission and any other published documents.

(j) The commission may provide by appropriate rules and regulations for reports, accounting, and statements from the award winner and college or university of attendance pertaining to the use or application of the award as the commission may deem proper.

(k) The commission may establish Cal Grant Program awards in one hundred dollar ($100) increments.

(*l*) A Cal Grant Program award may be utilized only at the following institutions or programs:

(1) Any California private or independent postsecondary educational institution or program that participates in two of the three federal campus-based student aid programs and whose students participate in the Pell Grant program.

(2) Any nonprofit regionally accredited institution headquartered and operating in California that certifies to the commission that 10 percent of the institution's operating budget, as demonstrated in an audited financial statement, is expended for the purposes of institutionally funded student financial aid in the form of

grants and that demonstrates to the commission that it has the administrative capacity to administer the funds.

(3) Any California public postsecondary educational institution or program.

CHAPTER 669

An act to amend Sections 16809.4, 17603, and 17604 of, and to amend and repeal Sections 16809 and 16809.3 of, the Welfare and Institutions Code, relating to public social services.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 16809 of the Welfare and Institutions Code, as amended by Section 1 of Chapter 547 of the Statutes of 1995, is amended to read:

16809. (a) (1) The board of supervisors of a county which contracted with the department pursuant to Section 16709 during the 1990–91 fiscal year and any county with a population under 300,000, as determined in accordance with the 1990 decennial census, by adopting a resolution to that effect, may elect to participate in the County Medical Services Program. The County Medical Services Program shall have responsibilities for specified health services to county residents certified eligible for those services by the county.

(2) If the County Medical Services Program Governing Board contracts with the department to administer the County Medical Services Program, that contract shall include, but need not be limited to, all of the following:

(A) Provisions for the payment to participating counties for making eligibility determinations based on the formula used by the County Medical Services Program for the 1993–94 fiscal year.

(B) Provisions for payment of expenses of the County Medical Services Program Governing Board.

(C) Provisions relating to the flow of funds from counties' vehicle license fees, sales taxes, and participation fees and the procedures to be followed if a county does not pay those funds to the program.

(D) Those provisions, as applicable, contained in the 1993–94 fiscal year contract with counties under the County Medical Services Program.

(3) The contract between the department and the County Medical Services Program Governing Board shall require that the state maintain at least the level of administrative support provided to the County Medical Services Program for the 1993–94 fiscal year. The department may decline to implement decisions made by the

governing board that would require a greater level of administrative support than that for the 1993–94 fiscal year. The department may implement decisions upon compensation by the governing board to cover that increased level of support.

(4) The department shall administer the County Medical Services Program pursuant to the provisions of the 1993–94 fiscal year contract with the counties and regulations relating to the administration of the program until the County Medical Services Program Governing Board executes a contract for the administration of the County Medical Services Program and adopts regulations for that purpose.

(5) The department shall not be liable for any costs related to decisions of the County Medical Services Program Governing Board that are in excess of those set forth in the contract between the department and the County Medical Services Program Governing Board.

(b) Each county intending to participate in the County Medical Services Program pursuant to this section shall submit to the Governing Board of the County Medical Services Program a notice of intent to contract adopted by the board of supervisors no later than April 1 of the fiscal year preceding the fiscal year in which the county will participate in the County Medical Services Program.

(c) A county participating in the County Medical Services Program pursuant to this section shall not be relieved of its indigent health care obligation under Section 17000.

(d) (1) The County Medical Services Program Account is established in the County Health Services Fund. The following amounts may be deposited in the account:

(A) Any interest earned upon money deposited in the account.

(B) Moneys provided by participating counties or appropriated by the Legislature to the account.

(C) Moneys loaned pursuant to subdivision (q).

(2) The methods and procedures used to deposit funds into the account shall be consistent with the methods used by the program during the 1993–94 fiscal year.

(e) Moneys in the program account shall be used by the department, pursuant to its contract with the County Medical Services Program Governing Board, to pay for health care services provided to the persons meeting the eligibility criteria established pursuant to subdivision (j) and to pay for the expense of the governing board as set forth in the contract between the board and the department.

(f) (1) Moneys in this account shall be administered on an accrual basis and notwithstanding any other provision of law, except as provided in this section, shall not be transferred to any other fund or account in the State Treasury except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

(2) (A) All interest or other increment resulting from the investment shall be deposited in the program account, at the end of the 1982–83 fiscal year and every six months thereafter, notwithstanding Section 16305.7 of the Government Code.

(B) All interest deposited pursuant to subparagraph (A) shall be available to reimburse program-covered services, County Medical Services Program Governing Board expenses, or for expenditures to augment the program's rates, benefits, or eligibility criteria pursuant to subdivision (j).

(g) A separate County Medical Services Program Reserve Account is established in the County Health Services Fund. Six months after the end of each fiscal year, any projected savings in the program account shall be transferred to the reserve account, with final settlement occurring no more than 12 months later. Moneys in this account shall be utilized when expenditures for health services made pursuant to subdivision (j) for a fiscal year exceed the amount of funds available in the program account for that fiscal year. When funds in the reserve account are estimated to exceed 10 percent of the budget for health services for all counties electing to participate in the County Medical Services Program under this section for the fiscal year, the additional funds shall be available for expenditure to augment the rates, benefits, or eligibility criteria pursuant to subdivision (j) or for reducing the participation fees as determined by the County Medical Services Program Governing Board pursuant to subdivision (i). Nothing in this section shall preclude the CMSP Governing Board from establishing other reserves.

(h) Moneys in the program account and the reserve account, except for moneys provided by the state in excess of the amount required to fund the state risk specified in subdivision (j), and any funds loaned pursuant to subdivision (p) shall not be transferred to any other fund or account in the State Treasury except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code. All interest or other increment resulting from investment shall be deposited in the program account, notwithstanding Section 16705.7 of the Government Code.

(i) (1) Counties shall pay participation fees as established by the County Medical Services Program Governing Board and their jurisdictional risk amount in a method that is consistent with that established in the 1993–94 fiscal year.

(2) A county may request, due to financial hardship, the payments under paragraph (1) be delayed. The request shall be subject to approval by the CMSP Governing Board.

(3) Payments made pursuant to this subdivision shall be deposited in the program account.

(4) Payments may be made as part of the deposits authorized by the county pursuant to Sections 17603.05 and 17604.05.

(j) (1) (A) For the 1991–92 fiscal year and all preceding fiscal years, the state shall be at risk for any costs in excess of the amounts deposited in the reserve fund.

(B) Beginning in the 1992–93 fiscal year and for each fiscal year thereafter, counties and the state shall share the risk for cost increases of the County Medical Services Program not funded through other sources. The state shall be at risk for any cost that exceeds the cumulative annual growth in dedicated sales tax and vehicle license fee revenue, up to the amount of twenty million two hundred thirty-seven thousand four hundred sixty dollars ($20,237,460) per fiscal year. Counties shall be at risk up to the cumulative annual growth in the Local Revenue Fund created by Section 17600, according to the table specified in paragraph (2), to the County Medical Services Program, plus the additional cost increases in excess of twenty million two hundred thirty-seven thousand four hundred sixty dollars ($20,237,460) per fiscal year. In the 1994–95 fiscal year, the amount of the state risk shall be twenty million two hundred thirty-seven thousand four hundred sixty dollars ($20,237,460) per fiscal year, in addition to the cost of administrative support pursuant to paragraph (3) of subdivision (a).

(C) The CMSP Governing Board, after consultation with the department, shall establish uniform eligibility criteria and benefits for the County Medical Services Program.

(2) For the 1991–92 fiscal year, jurisdictional risk limitations shall be as follows:

Jurisdiction	Amount
Alpine	$ 13,150
Amador	620,264
Butte	5,950,593
Calaveras	913,959
Colusa	799,988
Del Norte	781,358
El Dorado	3,535,288
Glenn	787,933
Humboldt	6,883,182
Imperial	6,394,422
Inyo	1,100,257
Kings	2,832,833
Lassen	687,113
Madera	2,882,147
Marin	7,725,909
Mariposa	435,062
Modoc	469,034
Mono	369,309

Napa	3,062,967
Nevada	1,860,793
Plumas	905,192
San Benito	1,086,011
Shasta	5,361,013
Sierra	135,888
Siskiyou	1,372,034
Solano	6,871,127
Sonoma	13,183,359
Sutter	2,996,118
Tehama	1,912,299
Trinity	611,497
Tuolumne	1,455,320
Yuba	2,395,580

(3) Beginning in the 1991–92 fiscal year and in subsequent fiscal years, the jurisdictional risk limitation for the counties that did not contract with the department pursuant to Section 16709 during the 1990–91 fiscal year shall be the amount specified in paragraph (A) plus the amount determined pursuant to paragraph (B), minus the amount specified by the County Medical Services Program Governing Board as participation fees.

(A)

Jurisdiction	Amount
Lake	$1,022,963
Mendocino	1,654,999
Merced	2,033,729
Placer	1,338,330
San Luis Obispo	2,000,491
Santa Cruz	3,037,783
Yolo	1,475,620

(B) The amount of funds necessary to fully fund the anticipated costs for the county shall be determined by the CMSP Governing Board before a county is permitted to participate in the County Medical Services Program.

(4) For the 1994–95 and 1995–96 fiscal years, the specific amounts and method of apportioning risk to each participating county may be adjusted by the CMSP Governing Board.

(k) The Legislature hereby determines that an expedited contract process for contracts under this section is necessary. Contracts under this section shall be exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public

Contract Code. Contracts of the department pursuant to this section shall have no force or effect unless they are approved by the Department of Finance.

(*l*) The state shall not incur any liability except as specified in this section.

(m) Third-party recoveries for services provided under this section pursuant to Article 3.5 (commencing with Section 14124.70) of Chapter 7 of Part 3 may be pursued.

(n) Under the program provided for in this section, the department may reimburse hospitals for inpatient services at the rates negotiated for the Medi-Cal program by the California Medical Assistance Commission, pursuant to Article 2.6 (commencing with Section 14081) of Chapter 7 of Part 3, if the California Medical Assistance Commission determines that reimbursement to the hospital at the contracted rate will not have a detrimental fiscal impact on either the Medi-Cal program or the program provided for in this section. In negotiating and renegotiating contracts with hospitals, the commission may seek terms which allow reimbursement for patients receiving services under this section at contracted Medi-Cal rates.

(o) Any hospital which has a contract with the state for inpatient services under the Medi-Cal program and which has been approved by the commission to be reimbursed for patients receiving services under this section shall not deny services to these patients.

(p) Participating counties may conduct an independent program review to identify ways through which program savings may be generated. The counties and the department may collectively pursue identified options for the realization of program savings.

(q) The Department of Finance may authorize a loan of up to thirty million dollars ($30,000,000) for deposit into the program account to ensure that there are sufficient funds available to reimburse providers and counties pursuant to this section.

(r) Regulations adopted by the department pursuant to this section shall remain operative and shall be used to operate the County Medical Services Program until a contract with the County Medical Services Program Governing Board is executed and regulations, as appropriate, are adopted by the County Medical Services Program Governing Board. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, those regulations adopted under the County Medical Services Program shall become inoperative until January 1, 1998, except those regulations that the department, in consultation with the County Medical Services Program Governing Board, determines are needed to continue to administer the County Medical Services Program. The department shall notify the Office of Administrative Law as to those regulations the department will continue to use in the implementation of the County Medical Services Program.

(s) Moneys appropriated from the General Fund to meet the state risk as set forth in subparagraph (B) of paragraph (1) of subdivision (j) shall not be available for those counties electing to disenroll from the County Medical Services Program.

(t) 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. Section 16809 of the Welfare and Institutions Code, as amended by Section 2 of Chapter 547 of the Statutes of 1995, is amended to read:

16809. (a) The board of supervisors of a county which contracted with the department pursuant to Section 16709 during the 1990–91 fiscal year and any county with a population under 300,000, as determined in accordance with the 1990 decennial census, may enter into a contract with the department and the department may enter into a contract with that county under which the department agrees to administer the program responsibilities for specified health services to county residents certified eligible for those services by the county.

(b) Each county intending to contract with the department pursuant to this section shall submit to the department a notice of intent to contract adopted by the board of supervisors no later than April 1 of the fiscal year preceding the fiscal year for which the agreement will be in effect in accordance with procedures established by the department.

(c) A county contracting with the department pursuant to this section shall not be relieved of its indigent health care obligation under Section 17000.

(d) The department shall establish the County Medical Services Program Account in the County Health Services Fund. The following amounts may be deposited in the account:

(1) Any interest earned upon money deposited in the account.

(2) Moneys provided by participating counties or appropriated by the Legislature to the account.

(3) Moneys loaned pursuant to subdivision (p).

(e) Moneys in the program account shall be used by the department to pay for health care services provided to the persons meeting the eligibility criteria established pursuant to subdivision (j).

(f) (1) Moneys in this account shall be administered on an accrual basis and notwithstanding any other provision of law, except as provided in this section, shall not be transferred to any other fund or account in the State Treasury except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

(2) (A) All interest or other increment resulting from the investment shall be deposited in the program account, at the end of

the 1982–83 fiscal year and every six months thereafter, notwithstanding Section 16305.7 of the Government Code.

(B) All interest deposited pursuant to subparagraph (A) shall be available to reimburse program-covered services, or for expenditures to augment the program's rates, benefits, or eligibility criteria pursuant to subdivision (j).

(g) The department shall establish a separate County Medical Services Program Reserve Account in the County Health Services Fund. Six months after the end of each fiscal year, any projected savings in the program account shall be transferred to the reserve account, with final settlement occurring no more than 12 months later. Moneys in this account shall be utilized when expenditures for health services made pursuant to subdivision (j) for a fiscal year exceed the amount of funds available in the program account for that fiscal year. When funds in the reserve account are estimated to exceed 10 percent of the budget for health services for all counties electing to contract with the department under this section for the fiscal year, the additional funds shall be available for expenditure to augment the rates, benefits, or eligibility criteria pursuant to subdivision (j) or for reducing the participation fees required by Section 16809.3.

(h) Moneys in the program account and the reserve account, except for moneys provided by the state in excess of the amount required to fund the state risk specified in subdivision (j), and any funds loaned pursuant to subdivision (p), shall not be transferred to any other fund or account in the State Treasury except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code. All interest or other increment resulting from investment shall be deposited in the program account, notwithstanding Section 16705.7 of the Government Code.

(i) (1) Counties shall pay by the 15th of each month the agreed upon contract amount. In the event a county does not make the agreed upon monthly payment, the department may terminate the county's participation in the program.

(2) A county may request, due to financial hardship, the payments under paragraph (1) be delayed. The request shall be subject to approval by the Small County Advisory Committee.

(3) Payments made pursuant to this subdivision shall be deposited in the program account.

(4) Payments may be made as part of the deposits authorized by the county pursuant to Sections 17603.05 and 17604.05.

(j) (1) (A) For the 1991–92 fiscal year and all preceding fiscal years, the state shall be at risk for any costs in excess of the amounts deposited in the reserve fund.

(B) Beginning in the 1992–93 fiscal year and for each fiscal year thereafter, counties and the state shall share the risk for cost increases of the County Medical Services Program not funded through other

sources. The state shall be at risk for any cost that exceeds the cumulative annual growth in dedicated sales tax and vehicle license fee revenue, up to the amount of twenty million two hundred thirty-seven thousand four hundred sixty dollars ($20,237,460) per fiscal year. Counties shall be at risk up to the cumulative annual growth in the Local Revenue Fund created by Section 17600 according to the table specified in paragraph (2) to the County Medical Services Program, plus additional cost increases in excess of twenty million two hundred thirty-seven thousand four hundred sixty dollars ($20,237,460) per fiscal year.

(C) As a condition of the state assuming this risk, the department may require uniform eligibility criteria and benefits to be provided which shall be mutually established by participating counties in conjunction with the department. The County Medical Services Program Governing Board may revise these eligibility criteria and benefits or alter rates of payment in order to assure that expenditures do not exceed the funds available in the program account.

(2) For the 1991–92 fiscal year, jurisdictional risk limitations shall be as follows:

Jurisdiction	Amount
Alpine	$ 13,150
Amador	620,264
Butte	5,950,593
Calaveras	913,959
Colusa	799,988
Del Norte	781,358
El Dorado	3,535,288
Glenn	787,933
Humboldt	6,883,182
Imperial	6,394,422
Inyo	1,100,257
Kings	2,832,833
Lassen	687,113
Madera	2,882,147
Marin	7,725,909
Mariposa	435,062
Modoc	469,034
Mono	369,309
Napa	3,062,967
Nevada	1,860,793
Plumas	905,192
San Benito	1,086,011
Shasta	5,361,013

Sierra	135,888
Siskiyou	1,372,034
Solano	6,871,127
Sonoma	13,183,359
Sutter	2,996,118
Tehama	1,912,299
Trinity	611,497
Tuolumne	1,455,320
Yuba	2,395,580

(3) Beginning in the 1991–92 fiscal year and in subsequent fiscal years, the jurisdictional risk limitation for the counties that did not contract with the department pursuant to Section 16709 during the 1990–91 fiscal year shall be the amount specified in paragraph (A) plus the amount determined pursuant to paragraph (B), minus the amount specified in Section 16809.3.

(A)

Jurisdiction	Amount
Lake	1,022,963
Mendocino	1,654,999
Merced	2,033,729
Placer	1,338,330
San Luis Obispo	2,000,491
Santa Cruz	3,037,783
Yolo	1,475,620

(B) The amount of funds necessary to fully fund the anticipated costs for the county shall be determined by the department. This amount shall be subject to the approval of both the Department of Finance and the Small County Advisory Committee before a county is permitted to contract back with the department.

(4) For the 1992–93 fiscal year and fiscal years thereafter, the amounts of the jurisdictional risk limitations shall be adjusted according to the provisions of paragraph (2).

(k) The Legislature hereby determines that an expedited contract process for contracts under this section is necessary. Contracts under this section shall be exempt from the provisions of Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. Contracts shall have no force and effect unless approved by the Department of Finance.

(*l*) The state shall not incur any liability except as specified in this section.

(m) The department may pursue third-party recoveries for services provided under this section pursuant to Article 3.5 (commencing with Section 14124.70) of Chapter 7 of Part 3.

(n) Under the program provided for in this section, the department shall reimburse hospitals for inpatient services at the rates negotiated for the Medi-Cal program by the California Medical Assistance Commission, pursuant to Article 2.6 (commencing with Section 14081) of Chapter 7 of Part 3, if the California Medical Assistance Commission determines that reimbursement to the hospital at the contracted rate will not have a detrimental fiscal impact on either the Medi-Cal program or the program provided for in this section. In negotiating and renegotiating contracts with hospitals, the commission may seek terms which allow reimbursement for patients receiving services under this section at contracted Medi-Cal rates.

(o) Any hospital which has a contract with the state for inpatient services under the Medi-Cal program and which has been approved by the commission to be reimbursed for patients receiving services under this section shall not deny services to these patients.

(p) Participating counties may conduct an independent program review to identify ways through which program savings may be generated. The counties and the department shall collectively pursue identified options for the realization of program savings.

(q) The Department of Finance may authorize a loan of up to thirty million dollars ($30,000,000) for deposit into the program account to ensure that there are sufficient funds available to reimburse providers and counties pursuant to this section.

(r) This section shall become operative January 1, 2003.

SEC. 3. Section 16809.3 of the Welfare and Institutions Code is amended to read:

16809.3. (a) Beginning in the 1991–92 fiscal year, and in each fiscal year thereafter, a county shall pay the amount listed below or as established by the County Medical Services Program Governing Board pursuant to subparagraph (B) of paragraph (1) of subdivision (f) of Section 16809.4, to the department as a condition of participation in the County Medical Services Program administered pursuant to Section 16809:

Jurisdiction	Amount
Alpine	$ 661
Amador	17,107
Butte	459,610
Calaveras	30,401
Colusa	28,997
Del Norte	39,424
El Dorado	233,492

Glenn	33,989
Humboldt	430,851
Imperial	249,786
Inyo	18,950
Kings	195,053
Lassen	17,206
Madera	151,434
Marin	576,233
Mariposa	5,649
Modoc	9,688
Mono	25,469
Napa	142,767
Nevada	42,051
Plumas	23,796
San Benito	37,018
Shasta	294,369
Sierra	6,183
Siskiyou	48,956
Solano	809,548
Sonoma	718,947
Sutter	188,781
Tehama	79,950
Trinity	8,319
Tuolumne	34,947
Yuba	101,907

(b) Beginning in the 1991–92 fiscal year and in each fiscal year thereafter, counties which did not contract with the department pursuant to Section 16709 during the 1990–91 fiscal year shall pay the following amount listed below or as established by the County Medical Services Program Governing Board pursuant to subparagraph (B) of paragraph (1) of subdivision (f) of Section 16809.4, to the department as a condition of participation in the County Medical Services Program, administered pursuant to Section 16809:

Jurisdiction	Amount
Lake	$150,278
Mendocino	247,578
Merced	488,954
Placer	247,193
San Luis Obispo	358,571

Santa Cruz	678,868
Yolo	532,510

(c) (1) County amounts specified in subdivisions (a) and (b) shall be paid to the department in 12 equal monthly payments according to the procedures specified by the department. Subject to paragraphs (2) and (3), a county that does not pay the amounts specified in subdivision (a) or (b) may be terminated from participation in the program.

(2) A county may request, due to financial hardship, that payments specified under subdivisions (a) and (b) be delayed. The request shall be subject to the approval of the Small County Advisory Committee.

(3) For the 1991–92 fiscal year and subsequent fiscal years, counties that enter the County Medical Services Program shall pay the amount specified in subdivision (a) or (b), as applicable, on a prorated basis, for the number of contracted months of participation in the County Medical Services Program.

(d) The payments required by subdivision (c) shall not be paid for with funds from the health account of the local health and welfare trust fund established pursuant to Section 17600.10.

(e) The department shall reduce the amounts specified in subdivision (b) if the revenue authority provided for in either Section 29550 of the Government Code, or Section 97 of the Revenue and Taxation Code, or both, which is effective on or after September 1, 1991, is reduced by enactment of legislation or by judicial order, unless those county general purpose revenues are replaced in the 1991–92 fiscal year and subsequent fiscal years by county general purpose revenue authority which, when added to the remaining revenue authority, will be equal to the revenue authority made available to the counties during the 1991–92 fiscal year.

(f) This section shall become inoperative January 1, 1995, and shall become operative January 1, 2003.

SEC. 4. Section 16809.4 of the Welfare and Institutions Code is amended to read:

16809.4. (a) Counties voluntarily participating in the County Medical Services Program pursuant to Section 16809 may establish the County Medical Services Program Governing Board pursuant to procedures contained in this section. The board shall govern the CMSP program.

(b) The membership of the board shall be comprised of all of the following:

(1) Three members who shall each be a member of a county board of supervisors.

(2) Three members who shall be county administrative officers.

(3) Two members who shall be county welfare directors.

(4) Two members who shall be county health officials.

(5) One member who shall be the Secretary of the Health and Welfare Agency, or his or her designee, and who shall serve as an ex officio, nonvoting member.

(c) The board may establish its own bylaws and operating procedures.

(d) The voting membership of the board shall meet all of the following requirements:

(1) All of the members shall hold office or employment in counties that participate in the CMSP program.

(2) The initial CMSP Governing Board shall be composed of the incumbent members of the Small County Advisory Committee holding office on the effective date of this section. Those members shall choose one additional county supervisor and one additional county administrative officer. The initial CMSP Governing Board shall hold office until April 1, 1995.

(3) The initial CMSP Governing Board shall be succeeded on April 1, 1995, by a board chosen in the following order so as to ensure that no two representatives shall be from the same county.

Following the effective date of this section:

(A) The three county supervisor members shall be elected by the CMSP counties acting prior to February 1, 1995, with each county having one vote and convened at the call of the Chair of the CMSP Governing Board.

(B) The three county administrative officers shall be elected by the administrative officers of the CMSP counties convened at the call of the Chair of the CMSP Governing Board prior to February 15, 1995.

(C) The two county health officials shall be selected by the health officials of the CMSP counties convened at the call of the Chair of the CMSP Governing Board prior to March 1, 1995.

(D) The two county welfare directors shall be elected by the welfare directors of the CMSP counties convened at the call of the Chair of the CMSP Governing Board prior to March 15, 1995.

(4) Board members shall serve three-year terms.

(5) No two persons from the same county may serve as members of the board at the same time.

(e) (1) The board shall convene its first meeting at the call of the Chair of the Small County Advisory Committee, who shall serve as interim chairperson of the board.

(2) The board may elect a permanent chair.

(f) (1) The CMSP Governing Board is hereby established with the following powers:

(A) Determine program eligibility and benefit levels.

(B) Establish reserves and participation fees.

(C) Establish procedures for the entry into, and disenrollment of counties from the County Medical Services Program. Disenrollment procedures shall be fair and equitable.

(D) Establish cost containment and case management procedures.

(E) Sue and be sued in the name of the CMSP Governing Board.

(F) Apportion jurisdictional risk to each county.

(G) Utilize procurement policies and procedures of any of the participating counties as selected by the governing board.

(H) Make rules and regulations.

(I) Make and enter into contracts or stipulations of any nature with a public agency or person for the purposes of governing the CMSP.

(J) Purchase supplies, equipment, materials, property, or services.

(K) Appoint and employ staff to assist the CMSP Governing Board.

(L) Establish rules for its proceedings.

(M) Accept gifts, contributions, grants, or loans from any public agency or person for the purposes of this program.

(N) Negotiate and set rates, charges, or fees with service providers.

(O) Establish methods of payment that are consistent with the administrative requirements of the department's fiscal intermediary.

(P) Use generally accepted accounting procedures.

(2) The Legislature finds and declares that the amendment of subparagraph (N) of paragraph (1) in 1995 is declaratory of existing law.

(g) (1) The CMSP Governing Board shall be considered a "public entity" for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, and a "local public entity" for purposes of Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code, but shall not be considered a "state agency" for purposes of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and shall be exempt from that chapter. No participating county shall have any liability for civil judgments awarded against the County Medical Services Program or the board. Nothing in this paragraph shall be construed to expand the liability of the state with respect to the County Medical Services Program beyond that set forth in Section 16809. Nothing in this paragraph shall be construed to relieve any county of the obligation to provide health care to indigent persons pursuant to Section 17000.

(2) Before initiating any proceeding to challenge rates of payment, charges, or fees set by the board, to seek reimbursement or release of any funds from the County Medical Services Program, or to challenge any other action by the board, any prospective claimant shall first notify the board, in writing, of the nature and basis of the challenge and the amount claimed. The board shall consider the matter within 60 days after receiving the notice and shall promptly thereafter provide written notice of the board's decision. This paragraph shall have no application to provider audit appeals conducted pursuant to Article 1.5 (commencing with Section 51016) of Chapter 3 of Division 3 of Title 22 of the California Code of

Regulations and shall apply to all claims not reviewed pursuant to Sections 51003 or 51015 of Title 22 of the California Code of Regulations.

(3) All regulations adopted by the CMSP Governing Board shall clearly specify by reference the statute, court decision, or other provision of law that the governing board is seeking to implement, interpret, or make specific by adopting, amending, or repealing the regulation.

(4) No regulation adopted by the governing board is valid and effective unless the regulation meets the standards of necessity, authority, clarity, consistency, and nonduplication, as defined in paragraph (4).

(5) The following definitions govern the interpretation of this subdivision:

(A) "Necessity" means the record of the regulatory proceeding that demonstrates by substantial evidence the need for the regulation. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.

(B) "Authority" means the provision of law that permits or obligates the CMSP Governing Board to adopt, amend, or repeal a regulation.

(C) "Clarity" means that the regulation is written or displayed so that the meaning of the regulation can be easily understood by those persons directly affected by it.

(D) "Consistency" means being in harmony with, and not in conflict with, or contradictory to, existing statutes, court decisions, or other provisions of law.

(E) "Nonduplication" means that a regulation does not serve the same purpose as a state or federal statute or another regulation. This standard requires that the governing board identify any state or federal statute or regulation that is overlapped or duplicated by the proposed regulation and justify any overlap or duplication. This standard is not intended to prohibit the governing board from printing relevant portions of enabling legislation in regulations when the duplication is necessary to satisfy the clarity standard in subparagraph (C). This standard is intended to prevent the indiscriminate incorporation of statutory language in a regulation.

(h) The requirements of the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) shall apply to the meetings of the CMSP Governing Board, except as otherwise provided in this subdivision. The board may meet in closed session to consider and take action on matters pertaining to contracts and contract negotiations with providers of health care services. The governing board shall comply with the following procedures for public meetings held to eliminate or reduce the level of services, restrict eligibility for services, or adopt regulations:

(1) Provide prior public notice of those meetings.

(2) Provide that notice not less than 30 days prior to those meetings.

(3) Publish that notice in a newspaper of general circulation in each participating CMSP county.

(4) Include in the notice, at a minimum, the amount and type of each proposed change, the expected savings, and the number of persons affected.

(5) Hold those meetings in the county seats of at least four regionally distributed CMSP participating counties.

(6) Locate those meetings so as to provide that each hearing will be within a four-hour one-way drive of one quarter of the target population so that the four meetings shall be held at locations in the state that will ensure that each member of the target population may reach at least one of the meetings by a one-way drive that does not exceed four hours.

(i) Records of the County Medical Services Program and of the CMSP Governing Board that relate to rates of payment or to the board's negotiations with providers of health care services or to the board's deliberative processes regarding either shall not be subject to disclosure pursuant to the Public Records Act (Chapter 5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(j) The following definitions shall govern the construction of this part, unless the context requires otherwise:

(1) "CMSP Governing Board" means the County Medical Services Program Governing Board established pursuant to this section.

(2) "Board" means the County Medical Services Program Governing Board established pursuant to this section.

(3) "CMSP" means the program by which health care services are provided to eligible persons in those counties electing to participate in the CMSP pursuant to Section 16809.

(4) "CMSP county" means a county that has elected to participate pursuant to Section 16809 in the CMSP.

(k) Any references to the "County Medical Services Program" or "CMSP county" in this code shall be defined as set forth in this section.

(*l*) 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. 5. Section 17603 of the Welfare and Institutions Code is amended to read:

17603. On or before the 27th day of each month, the Controller shall allocate to the local health and welfare trust fund health accounts the amounts deposited and remaining unexpended and unreserved on the 15th day of the month in the Health Subaccount of the Sales Tax Account of the Local Revenue Fund, in accordance with subdivisions (a) and (b):

(a) For the 1991–92 fiscal year, allocations shall be made in accordance with the following schedule:

Jurisdiction	Allocation Percentage
Alameda	4.5046
Alpine	0.0137
Amador	0.1512
Butte	0.8131
Calaveras	0.1367
Colusa	0.1195
Contra Costa	2.2386
Del Norte	0.1340
El Dorado	0.5228
Fresno	2.3531
Glenn	0.1391
Humboldt	0.8929
Imperial	0.8237
Inyo	0.1869
Kern	1.6362
Kings	0.4084
Lake	0.1752
Lassen	0.1525
Los Angeles	37.2606
Madera	0.3656
Marin	1.0785
Mariposa	0.0815
Mendocino	0.2586
Merced	0.4094
Modoc	0.0923
Mono	0.1342
Monterey	0.8975
Napa	0.4466
Nevada	0.2734
Orange	5.4304
Placer	0.2806
Plumas	0.1145
Riverside	2.7867
Sacramento	2.7497
San Benito	0.1701
San Bernardino	2.4709

San Diego	4.7771
San Francisco	7.1450
San Joaquin	1.0810
San Luis Obispo	0.4811
San Mateo	1.5937
Santa Barbara	0.9418
Santa Clara	3.6238
Santa Cruz	0.6714
Shasta	0.6732
Sierra	0.0340
Siskiyou	0.2246
Solano	0.9377
Sonoma	1.6687
Stanislaus	1.0509
Sutter	0.4460
Tehama	0.2986
Trinity	0.1388
Tulare	0.7485
Tuolumne	0.2357
Ventura	1.3658
Yolo	0.3522
Yuba	0.3076
Berkeley	0.0692
Long Beach	0.2918
Pasadena	0.1385

(b) For the 1992–93 fiscal year and fiscal years thereafter, the allocations to each county and city and county shall equal the amounts received in the prior fiscal year by each county, city, and city and county from the Sales Tax Account and the Sales Tax Growth Account of the Local Revenue Fund into the health and welfare trust fund.

SEC. 6. Section 17604 of the Welfare and Institutions Code is amended to read:

17604. (a) All motor vehicle license fee revenues collected in the 1991–92 fiscal year that are deposited to the credit of the Local Revenue Fund shall be credited to the Vehicle License Fee Account of that fund.

(b) (1) For the 1992–93 fiscal year and fiscal years thereafter, from vehicle license fee proceeds from revenues deposited to the credit of the Local Revenue Fund, the Controller shall make monthly deposits to the Vehicle License Fee Account of the Local Revenue Fund until the deposits equal the amounts that were allocated to

counties, cities, and cities and counties as general purpose revenues in the prior fiscal year pursuant to this chapter from the Vehicle License Fee Account in the Local Revenue Fund and the Vehicle License Fee Account and the Vehicle License Fee Growth Account in the Local Revenue Fund.

(2) Any excess vehicle fee revenues deposited into the Local Revenue Fund pursuant to Section 11001.5 of the Revenue and Taxation Code shall be deposited in the Vehicle License Fee Growth Account of the Local Revenue Fund.

(c) (1) On or before the 27th day of each month, the Controller shall allocate to each county, city, or city and county, as general purpose revenues the amounts deposited and remaining unexpended and unreserved on the 15th day of the month in the Vehicle License Fee Account of the Local Revenue Fund, in accordance with paragraphs (2) and (3).

(2) For the 1991–92 fiscal year, allocations shall be made in accordance with the following schedule:

Jurisdiction	Allocation Percentage
Alameda	4.5046
Alpine	0.0137
Amador	0.1512
Butte	0.8131
Calaveras	0.1367
Colusa	0.1195
Contra Costa	2.2386
Del Norte	0.1340
El Dorado	0.5228
Fresno	2.3531
Glenn	0.1391
Humboldt	0.8929
Imperial	0.8237
Inyo	0.1869
Kern	1.6362
Kings	0.4084
Lake	0.1752
Lassen	0.1525
Los Angeles	37.2606
Madera	0.3656
Marin	1.0785
Mariposa	0.0815
Mendocino	0.2586

Merced	0.4094
Modoc	0.0923
Mono	0.1342
Monterey	0.8975
Napa	0.4466
Nevada	0.2734
Orange	5.4304
Placer	0.2806
Plumas	0.1145
Riverside	2.7867
Sacramento	2.7497
San Benito	0.1701
San Bernardino	2.4709
San Diego	4.7771
San Francisco	7.1450
San Joaquin	1.0810
San Luis Obispo	0.4811
San Mateo	1.5937
Santa Barbara	0.9418
Santa Clara	3.6238
Santa Cruz	0.6714
Shasta	0.6732
Sierra	0.0340
Siskiyou	0.2246
Solano	0.9377
Sonoma	1.6687
Stanislaus	1.0509
Sutter	0.4460
Tehama	0.2986
Trinity	0.1388
Tulare	0.7485
Tuolumne	0.2357
Ventura	1.3658
Yolo	0.3522
Yuba	0.3076
Berkeley	0.0692
Long Beach	0.2918
Pasadena	0.1385

(3) For the 1992–93, 1993–94, and 1994–95 fiscal year and fiscal years thereafter, allocations shall be made in the same amounts as

were distributed from the Vehicle License Fee Account and the Vehicle License Fee Growth Account in the prior fiscal year.

(4) For the 1995–96 fiscal year, allocations shall be made in the same amounts as distributed in the 1994–95 fiscal year from the Vehicle License Fee Account and the Vehicle License Fee Growth Account after adjusting the allocation amounts by the amounts specified for the following counties:

Alpine	$(11,296)
Amador	25,417
Calaveras	49,892
Del Norte	39,537
Glenn	(12,238)
Lassen	17,886
Mariposa	(6,950)
Modoc	(29,182)
Mono	(6,950)
San Benito	20,710
Sierra	(39,537)
Trinity	(48,009)

(5) For the 1996–97 fiscal year and fiscal years thereafter, allocations shall be made in the same amounts as were distributed from the Vehicle License Fee Account and the Vehicle License Fee Growth Account in the prior fiscal year.

(d) The Controller shall make monthly allocations from the amount deposited in the Vehicle License Collection Account of the Local Revenue Fund to each county in accordance with a schedule to be developed by the State Department of Mental Health in consultation with the California Mental Health Directors Association, which is compatible with the intent of the Legislature expressed in the act adding this subdivision.

CHAPTER 670

An act to add Section 20417 to the Government Code, and to amend Section 830.3 of the Penal Code, relating to peace officers, and making an appropriation therefor.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 20417 is added to the Government Code, to read:

20417. "State peace officer/firefighter member" also includes employees of the Franchise Tax Board who have been designated as peace officers in subdivision (s) of Section 830.3 of the Penal Code.

A member who is reclassified from state miscellaneous to state peace officer/firefighter pursuant to this section, may make an irrevocable election in writing to remain subject to the miscellaneous service retirement benefit and the normal rate of contribution by filing a notice of the election with the board within 90 days of notification by the board. A member who so elects shall be subject to the reduced benefit factors specified in Section 21353 only for service included in the federal system.

"Policeman" or "fireman," or both, for purposes of Section 418(d)(5)(A) of Title 42 of the United States Code includes persons classified as state peace officer/firefighter members pursuant to this section.

SEC. 1.5. Section 830.3 of the Penal Code is amended to read:

830.3. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. These peace officers may carry firearms only if authorized and under those terms and conditions as specified by their employing agencies:

(a) Persons employed by the Division of Investigation of the Department of Consumer Affairs and investigators of the Medical Board of California and the Board of Dental Examiners, who are designated by the Director of Consumer Affairs, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code.

(b) Voluntary fire wardens designated by the Director of Forestry and Fire Protection pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 4156 of that code.

(c) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 1655 of that code.

(d) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of Chapter 4 (commencing with Section

19400) of Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of this code.

(e) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 13104 of that code.

(f) Inspectors of the food and drug section designated by the chief pursuant to subdivision (a) of Section 106500 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 106500 of that code.

(g) All investigators of the Division of Labor Standards Enforcement designated by the Labor Commissioner, provided that the primary duty of these peace officers shall be enforcement of the law as prescribed in Section 95 of the Labor Code.

(h) All investigators of the State Departments of Health Services, Social Services, Mental Health, Developmental Services, and Alcohol and Drug Programs, the Department of Toxic Substances Control, and the Office of Statewide Health Planning and Development, and the Public Employees' Retirement System, provided that the primary duty of these peace officers shall be the enforcement of the law relating to the duties of his or her department, or office. Notwithstanding any other provision of law, investigators of the Public Employees' Retirement System shall not carry firearms.

(i) The Chief of the Bureau of Fraudulent Claims of the Department of Insurance and those investigators designated by the chief, provided that the primary duty of those investigators shall be enforcement of Section 550 of the Penal Code.

(j) Employees of the Department of Housing and Community Development designated under Section 18023 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 18023 of that code.

(k) Investigators of the office of the Controller, provided that the primary duty of these investigators shall be the enforcement of the law relating to the duties of that office. Notwithstanding any other law, except as authorized by the Controller, the peace officers designated pursuant to this subdivision shall not carry firearms.

(*l*) Investigators of the Department of Corporations designated by the Commissioner of Corporations, provided that the primary duty of these investigators shall be enforcement of the provisions of law administered by the Department of Corporations. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(m) Persons employed by the Contractors' State License Board designated by the Director of Consumer Affairs pursuant to Section

7011.5 of the Business and Professions Code, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 7011.5, and in Chapter 9 (commencing with Section 7000) of Division 3, of that code. The Director of Consumer Affairs may designate as peace officers not more than three persons who shall at the time of their designation be assigned to the special investigations unit of the board. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

(n) The chief and coordinators of the Law Enforcement Division of the Office of Emergency Services.

(o) Investigators of the office of the Secretary of State designated by the Secretary of State, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of, and Section 12172.5 of, the Government Code. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(p) The Deputy Director for Security designated by Section 8880.38 of the Government Code, and all lottery security personnel assigned to the California State Lottery and designated by the director, provided that the primary duty of any of those peace officers shall be the enforcement of the laws related to assuring the integrity, honesty, and fairness of the operation and administration of the California State Lottery.

(q) Investigators employed by the Investigation Division of the Employment Development Department designated by the director of the department, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 317 of the Unemployment Insurance Code.

Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(r) The chief and assistant chief of museum security and safety of the California Science Center, as designated by the executive director pursuant to Section 4108 of the Food and Agricultural Code, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 4108 of the Food and Agricultural Code.

(s) Employees of the Franchise Tax Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of the law as set forth in Chapter 9 (commencing with Section 19701) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(t) Notwithstanding any other provision of this section, a peace officer authorized by this section shall not be authorized to carry firearms by his or her employing agency until that agency has adopted a policy on the use of deadly force by those peace officers,

and until those peace officers have been instructed in the employing agency's policy on the use of deadly force.

Every peace officer authorized pursuant to this section to carry firearms by his or her employing agency shall qualify in the use of the firearms at least every six months.

SEC. 2. Section 830.3 of the Penal Code is amended to read:

830.3. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. These peace officers may carry firearms only if authorized and under those terms and conditions as specified by their employing agencies:

(a) Persons employed by the Division of Investigation of the Department of Consumer Affairs and investigators of the Medical Board of California and the Board of Dental Examiners, who are designated by the Director of Consumer Affairs, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code. The Director of Consumer Affairs shall designate as peace officers seven persons who shall at the time of their designation be assigned to the investigations unit of the Board of Dental Examiners.

(b) Voluntary fire wardens designated by the Director of Forestry and Fire Protection pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 4156 of that code.

(c) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 1655 of that code.

(d) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of this code.

(e) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 13104 of that code.

(f) Inspectors of the food and drug section designated by the chief pursuant to subdivision (a) of Section 106500 of the Health and Safety Code, provided that the primary duty of these peace officers shall be

the enforcement of the law as that duty is set forth in Section 106500 of that code.

(g) All investigators of the Division of Labor Standards Enforcement designated by the Labor Commissioner, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Section 95 of the Labor Code.

(h) All investigators of the State Departments of Health Services, Social Services, Mental Health, Developmental Services, and Alcohol and Drug Programs, the Department of Toxic Substances Control, the Office of Statewide Health Planning and Development, and the Public Employees' Retirement System, provided that the primary duty of these peace officers shall be the enforcement of the law relating to the duties of his or her department, or office. Notwithstanding any other provision of law, investigators of the Public Employees' Retirement System shall not carry firearms.

(i) The Chief of the Bureau of Fraudulent Claims of the Department of Insurance and those investigators designated by the chief, provided that the primary duty of those investigators shall be the enforcement of Section 550 of the Penal Code.

(j) Employees of the Department of Housing and Community Development designated under Section 18023 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 18023 of that code.

(k) Investigators of the office of the Controller, provided that the primary duty of these investigators shall be the enforcement of the law relating to the duties of that office. Notwithstanding any other law, except as authorized by the Controller, the peace officers designated pursuant to this subdivision shall not carry firearms.

(*l*) Investigators of the Department of Corporations designated by the Commissioner of Corporations, provided that the primary duty of these investigators shall be the enforcement of the provisions of law administered by the Department of Corporations. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(m) Persons employed by the Contractors' State License Board designated by the Director of Consumer Affairs pursuant to Section 7011.5 of the Business and Professions Code, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 7011.5, and in Chapter 9 (commencing with Section 7000) of Division 3, of that code. The Director of Consumer Affairs may designate as peace officers not more than three persons who shall at the time of their designation be assigned to the special investigations unit of the board. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

(n) The chief and coordinators of the Law Enforcement Division of the Office of Emergency Services.

(o) Investigators of the office of the Secretary of State designated by the Secretary of State, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of, and Section 12172.5 of, the Government Code. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(p) The Deputy Director for Security designated by Section 8880.38 of the Government Code, and all lottery security personnel assigned to the California State Lottery and designated by the director, provided that the primary duty of any of those peace officers shall be the enforcement of the laws related to assuring the integrity, honesty, and fairness of the operation and administration of the California State Lottery.

(q) Investigators employed by the Investigation Division of the Employment Development Department designated by the director of the department, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 317 of the Unemployment Insurance Code.

Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(r) The chief and assistant chief of museum security and safety of the California Science Center, as designated by the executive director pursuant to Section 4108 of the Food and Agricultural Code, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 4108 of the Food and Agricultural Code.

(s) Employees of the Franchise Tax Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of the law as set forth in Chapter 9 (commencing with Section 19701) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(t) Notwithstanding any other provision of this section, a peace officer authorized by this section shall not be authorized to carry firearms by his or her employing agency until that agency has adopted a policy on the use of deadly force by those peace officers, and until those peace officers have been instructed in the employing agency's policy on the use of deadly force.

Every peace officer authorized pursuant to this section to carry firearms by his or her employing agency shall qualify in the use of the firearms at least every six months.

SEC. 3. Section 2 of this bill incorporates amendments to Section 830.3 of the Penal Code proposed by both this bill and SB 826. 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

830.3 of the Penal Code, and (3) this bill is enacted after SB 826, in which case Section 1.5 of this bill shall not become operative.

CHAPTER 671

An act to amend Section 1430 of the Code of Civil Procedure, relating to escheat, and making an appropriation therefor.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 1430 of the Code of Civil Procedure is amended to read:

1430. (a) Upon the expiration of five years after the date of entry of judgment in any proceeding pursuant to this chapter, or upon the expiration of five years after completion of notice by publication in an escheat action taken pursuant to Section 1415, the property covered by that proceeding or action shall permanently escheat to the state, except as provided in subdivision (b).

(b) Infants and persons of unsound mind shall have the right to appear and claim such property as provided in this title if born before the expiration of the five-year period; but it shall be presumed that there are no infants nor persons of unsound mind who are or will be entitled to claim this property unless and until they appear and claim the property as provided in this title. This presumption shall be conclusive in favor of any purchaser in good faith and for a valuable consideration from the state and everyone subsequently claiming under him or her, saving however, to infants and persons of unsound mind the right of recourse to the proceeds of any sale or other disposition of any such property by the state and as herein provided.

(c) Except as otherwise provided in this subdivision, a named beneficiary of property that escheats pursuant to this title or, if the beneficiary is deceased or a court renders a judgment that the beneficiary is dead, a blood relative of the named beneficiary may claim property described in subdivision (a) at any time within five years after the date of entry of judgment in any proceeding under this chapter. The named beneficiary or, if a court has rendered a judgment that the named beneficiary is dead, the blood relative of the named beneficiary shall be entitled to immediate payment upon this claim. If a court has not rendered a judgment that the named beneficiary is dead, payment of the claim of a blood relative of the named beneficiary shall be made on the day before the expiration of the five-year period described in this section. This subdivision shall not apply to authorize a claim by any person, including any issue or blood relative of that person, whose interest or inheritance was

specifically restricted or barred by a provision in the donating or transferring instrument.

CHAPTER 672

An act to amend Sections 40001, 41821, 41850, 42000, 42005, and 42010 of, to amend and repeal Sections 41785 and 41820 of, to add Sections 40900.1, 41821.6, 42024, and 42241.5 to, and to repeal Section 42242 of, the Public Resources Code, relating to solid waste.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 40001 of the Public Resources Code is amended to read:

40001. (a) The Legislature declares that the responsibility for solid waste management is a shared responsibility between the state and local governments. The state shall exercise its legal authority in a manner that ensures an effective and coordinated approach to the safe management of all solid waste generated within the state and shall oversee the design and implementation of local integrated waste management plans.

(b) The Legislature further declares that it is the policy of the state to assist local governments in minimizing duplication of effort, and in minimizing the costs incurred, in implementing this division through the development of regional cooperative efforts and other mechanisms which comply with this division.

(c) The Legislature further declares that market development is the key to successful and cost-effective implementation of the 25-percent and 50-percent diversion requirements required pursuant to Section 41780, and that the state must take a leadership role, pursuant to Chapter 1 (commencing with Section 42000) of Part 3, in encouraging the expansion of markets for recycled products by working cooperatively with the public, private, and nonprofit sectors.

SEC. 2. Section 40900.1 is added to the Public Resources Code, to read:

40900.1. The Legislature hereby further finds and declares all of the following:

(a) It is important to encourage state agencies to plan and implement programs that will reduce the amount of solid waste going to disposal facilities through source reduction, recycling, and composting.

(b) Local agencies, other than a host jurisdiction, and federal agencies should be encouraged to plan and implement programs that

will reduce the amount of solid waste going to disposal facilities through source reduction, recycling, and composting.

(c) Each state agency shall, to the extent feasible and within existing budgetary constraints, develop and implement source reduction, recycling, and composting programs that will reduce the amount of solid waste going to disposal facilities. Those programs shall be consistent with Executive Order W-7-91, which ordered state agencies to establish recycling programs, reduce paper waste, purchase recycled products, and implement measures that minimize the generation of waste.

(d) Local, state, and federal agencies generating solid waste that is sent to a host jurisdiction for disposal should be encouraged to provide the host jurisdiction with information on the amount of solid waste and regarding any solid waste source reduction, recycling, or composting programs that have been implemented by the agency, to assist the host jurisdiction in developing and implementing the planning requirements of this division.

SEC. 3. Section 41785 of the Public Resources Code is amended to read:

41785. (a) On and after January 1, 1995, and upon the request of a city or county, the board may establish an alternative source reduction, recycling, and composting requirement to the 50-percent requirement established under Section 41780, not to exceed three years unless another alternative requirement is granted by the board, if the board holds a public hearing and makes both of the following findings based upon substantial evidence on the record:

(1) The city or county and has made a good faith effort to effectively implement the source reduction, recycling, and composting measures described in its board approved source reduction and recycling element and has demonstrated progress toward meeting the alternative requirement as described in its annual reports to the board and the city or county has been unable to meet the 50-percent diversion requirement despite implementing those measures.

(2) The alternative source reduction, recycling, and composting requirement represents the greatest diversion amount that the city or county, may reasonably and feasibly achieve.

(b) In making the decision whether to grant an alternative requirement pursuant to subdivision (a) and in determining the amount of the alternative requirement, the board shall consider circumstances in the city or county that support the request for an alternative requirement, such as waste disposal patterns within the city or county and the types of residential and nonresidential waste disposed by the city or county. The city or county may provide the board with any additional information that the city or county determines to be necessary to demonstrate to the board the need for the alternative requirement.

(c) If a city or county that requests an alternative source reduction and recycling requirement to the 50-percent requirement has not previously requested an extension pursuant to Section 41820, the city or county shall provide information to the board that explains why it has not requested an extension.

(d) A city or county that has previously been granted an alternative source reduction, recycling, and composting requirement may request another alternative source reduction, recycling, and composting requirement. A city or county that requests such another alternative requirement shall provide information to the board that demonstrates that the circumstances that supported the previous alternative source reduction, recycling, and composting requirement continue to exist or shall provide information to the board that describes changes in those previous circumstances that support another alternative source reduction, recycling, and composting requirement. The board shall review the original circumstances that supported the city or county's request, as well as any new information provided by the city or county that describes the current circumstances, to determine whether to grant another alternative requirement. The board may approve another alternative requirement if the board holds a public hearing and makes both of the following findings based upon substantial evidence in the record:

(1) The city or county has made a good faith effort to effectively implement the source reduction, recycling, and composting measures described in its board approved source reduction and recycling element and has demonstrated progress toward meeting the alternative requirement as described in its annual reports to the board.

(2) The alternative source reduction, recycling, and composting requirement represents the greatest diversion amount the city or county may reasonably and feasibly achieve.

(e) If the board establishes a new alternative requirement or rescinds the existing alternative requirement, the board shall do so at a public hearing. If the board establishes an alternative requirement, it shall make both of the following findings based upon substantial evidence in the record:

(1) The city or county has made a good faith effort to effectively implement the source reduction, recycling, and composting measures described in its board approved source reduction and recycling element and has demonstrated progress toward meeting the alternative requirement as described in its annual reports to the board and that the alternative diversion requirement is no longer appropriate.

(2) The new requirement represents the greatest amount of diversion that the city or county may reasonably and feasibly achieve.

(f) (1) No single alternative requirement may be granted for a period that exceeds three years and, if after the granting of the

original alternative requirement, another alternative requirement is granted, the combined period that the original and the new alternative requirement is in force and effect shall not exceed a total of five years.

(2) Any alternative requirement that is granted prior to January 1, 2000, shall become effective on January 1, 2000. The board shall require any city or county granted an alternative requirement prior to January 1, 2000, to comply with this section after the date that the alternative requirement is granted.

(3) No alternative requirement shall be granted for any period after January 1, 2006, and no alternative requirement shall be effective after January 1, 2006.

(4) No city or county shall be granted an alternative requirement if the city or county has failed to meet, on or before July 1, 1998, the applicable requirements of Chapter 2 (commencing with Section 41000), Chapter 3 (commencing with Section 41300), Chapter 3.5 (commencing with Section 41500), and Chapter 4.5 (commencing with Section 41730).

(g) (1) When considering a request for an alternative source reduction, recycling, and composting requirement, the board may make specific recommendations for the implementation of alternative programs.

(2) Nothing in this section precludes the board from disapproving any request for an alternative requirement.

(3) If the board disapproves a request for an alternative requirement, the board shall specify its reasons for disapproval.

(h) If the board grants an alternative source reduction, recycling, and composting requirement, the city or county may request technical assistance from the board to assist it in meeting the alternative source reduction, recycling, and composting requirement. If requested by the city or county, the board shall assist with identifying model policies and programs implemented by other jurisdictions of similar size, geography, and demographic mix.

(i) A city or county that is granted an alternative requirement pursuant to this section shall continue to implement source reduction, recycling, and composting programs, and shall report the status of those programs in the report required pursuant to Section 41821.

(j) This section shall remain in effect until January 1, 2006, and as of that date is repealed.

SEC. 4. Section 41820 of the Public Resources Code is amended to read:

41820. (a) The board may grant one or more, single, or multiyear time extension from the requirements of paragraph (2) of subdivision (a) of Section 41780 to any city, county, or regional agency if the following conditions are met:

(1) Any multiyear extension that is granted does not exceed three years and a city, county, or regional agency is not granted extensions that exceed a total of five years.

(2) Any extension granted prior to January 1, 2000, commences on January 1, 2000. The board shall require that any city, county, or regional agency granted an extension prior to January 1, 2000, complies with this section after the date that the extension is granted.

(3) No extension is granted for any period after January 1, 2006, and no extension is effective after January 1, 2006.

(4) The board considers the extent to which a city, county, or regional agency complied with its plan of correction before considering another extension.

(5) No city, county, or regional agency is granted an extension if that city, county, or regional agency failed to meet the applicable requirements of Chapter 2 (commencing with Section 41000), Chapter 3 (commencing with Section 41300), Chapter 3.5 (commencing with Section 41500), and Chapter 4.5 (commencing with Section 41730).

(6) The board adopts written findings, based upon substantial evidence in the record as follows:

(A) The city, county, or regional agency is making a good faith effort to implement the source reduction, recycling, and composting programs identified in its source reduction and recycling element.

(B) The city, county, or regional agency submits a plan of correction that demonstrates that the city, county, or regional agency will meet the requirements of paragraph (2) of subdivision (a) of Section 41780 before the time extension expires, includes the source reduction, recycling, or composting steps the city, county, or regional agency will implement, a date prior to the expiration of the time extension when the requirements of paragraph (2) of subdivision (a) of Section 41780 will be met, existing programs it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.

(b) (1) When considering a request for an extension, the board may make specific recommendations for the implementation of alternative programs.

(2) Nothing in this section shall preclude the board from disapproving any request for an extension.

(3) If the board disapproves a request for an extension, the board shall specify its reasons for the disapproval.

(c) (1) In determining whether to grant the request by a city, county, or regional agency for the time extension authorized by subdivision (a), the board shall consider information provided by the city, county, or regional agency that describes relevant circumstances in the city, county, or regional agency that contributed to the request for extension, such as lack of markets for recycled materials, local efforts to implement source reduction, recycling, and composting programs, facilities built or planned, waste

disposal patterns within the jurisdiction, and the type of residential and nonresidential waste disposed by the city, county, or regional agency.

(2) The city, county, or regional agency may provide the board with any additional information that the jurisdiction determines to be necessary to demonstrate to the board the need for the extension.

(d) If the board grants a time extension pursuant to subdivision (a), the city, county, or regional agency may request technical assistance from the board to assist it in meeting the diversion requirements of paragraph (2) of subdivision (a) of Section 41780 during the extension period. If requested by the city, county, or regional agency, the board shall assist the city, county, or regional agency with identifying model policies and programs implemented by other jurisdictions of similar size, geography, and demographic mix.

(e) This section shall remain in effect only until January 1, 2006, and as of that date is repealed.

SEC. 5. Section 41821 of the Public Resources Code is amended to read:

41821. (a) Each year following the board's approval of a city, county, or regional agency's source reduction and recycling element, household hazardous waste element, and nondisposal facility element, the city, county, or regional agency shall submit a report to the board summarizing its progress in reducing solid waste as required by Section 41780. The annual report shall be due on or before August 1 of the year following board approval of the source reduction and recycling element, the household hazardous waste element, and the nondisposal facility element, and on or before August 1 in each subsequent year. The information in this report shall encompass the previous calendar year, January 1 to December 31, inclusive.

(b) Each jurisdiction's annual report to the board shall, at a minimum, include the following:

(1) Calculations of annual disposal reduction.

(2) Information on the changes in waste generated or disposed of due to increases or decreases in population, economics, or other factors complying with subdivision (c) of Section 41780.1.

(3) A summary of progress made in implementing the source reduction and recycling element and the household hazardous waste element.

(4) If the jurisdiction has been granted a time extension by the board pursuant to Section 41820, the jurisdiction shall include a summary of progress made in meeting the source reduction and recycling element implementation schedule pursuant to paragraph (2) of subdivision (a) of Section 41780 and complying with the jurisdiction's plan of correction, prior to the expiration of the time extension.

(5) If the jurisdiction has been granted an alternative source reduction recycling, and composting requirement pursuant to Section 41785, the jurisdiction shall include a summary of progress made towards meeting the alternative requirement as well as an explanation of current circumstances that support the continuation of the alternative requirement.

(6) Other information relevant to compliance with Section 41780.

(c) The board shall use, but is not limited to the use of, the annual report in the determination of whether the jurisdiction's source reduction and recycling element needs to be revised.

SEC. 6. Section 41821.6 is added to the Public Resources Code, to read:

41821.6. To assist market development efforts by the board, local agencies, and the private sector, the board shall use existing data resources collected from recycling, composting, and disposal facilities, or from other sources, to provide periodic information on the recovery and availability of recycled materials.

SEC. 7. Section 41850 of the Public Resources Code is amended to read:

41850. (a) Except as specifically provided in Section 41813, if, after holding the public hearing and issuing an order of compliance pursuant to Section 41825, the board finds that the city, county, or regional agency has failed to implement its source reduction and recycling element or its household hazardous waste element, the board may impose administrative civil penalties upon the city or county or, pursuant to Section 40974, upon the city or county as a member of a regional agency, of up to ten thousand dollars ($10,000) per day until the city, county, or regional agency implements the element.

(b) In determining whether or not to impose any penalties, or in determining the amount of any penalties imposed under this section, including any penalties imposed due to the exclusion of solid waste pursuant to Section 41781.2 which results in a reduction in the quantity of solid waste diverted by a city, county, or regional agency, the board shall consider only those relevant circumstances which have prevented a city, county, or regional agency from meeting the requirements of this division, including the diversion requirements of paragraphs (1) and (2) of subdivision (a) of Section 41780, including, but not limited to, all of the following:

(1) Natural disasters.

(2) Budgetary conditions within a city, county, or regional agency which could not be remedied by the imposition or adjustment of solid waste fees.

(3) Work stoppages which directly prevent a city, county, or regional agency from implementing its source reduction and recycling element or household hazardous waste element.

(4) The impact of the failure of federal, state, and other local agencies located within the jurisdiction to implement source

reduction and recycling programs in the jurisdiction on the host jurisdiction's ability to meet the requirements of paragraph (2) of subdivision (a) of Section 41780.

(c) In addition to the factors specified in subdivision (b), the board shall consider all of the following:

(1) (A) The extent to which a city, county, or regional agency has made good faith efforts to implement its source reduction and recycling element or household hazardous waste element.

(B) (i) For the purposes of this paragraph, "good faith efforts" means all reasonable and feasible efforts by a city, county, or regional agency to implement those programs or activities identified in its source reduction and recycling element or household hazardous waste element, or alternative programs or activities that achieve the same or similar results.

(ii) For purposes of this paragraph, "good faith efforts" may also include the evaluation by a city, county, or regional agency of improved technology for the handling and management of solid waste that would reduce costs, improve efficiency in the collection, processing, or marketing of recyclable materials or yard waste, and enhance the ability of the city, county, or regional agency to meet the diversion requirements of paragraphs (1) and (2) of subdivision (a) of Section 41780, provided that the city, county, or regional agency has submitted a compliance schedule pursuant to Section 41825, and has made all other reasonable and feasible efforts to implement the programs identified in its source reduction and recycling element or household hazardous waste element.

(iii) In determining whether a jurisdiction has made a good faith effort, the board shall consider the enforcement criteria included in its enforcement policy, as adopted on April 25, 1995, or as subsequently amended.

(2) The extent to which a city, county, or regional agency has implemented additional source reduction, recycling, and composting activities to comply with the diversion requirements of paragraphs (1) and (2) of subdivision (a) of Section 41780.

(3) The extent to which a city, county, or regional agency is meeting the diversion requirements of paragraphs (1) and (2) of subdivision (a) of Section 41780.

(4) Whether the jurisdiction has requested and been granted an extension to the requirements of Section 41780, pursuant to Section 41820, or an alternative requirement to Section 41780, pursuant to Section 41785.

SEC. 8. Section 42000 of the Public Resources Code is amended to read:

42000. The Legislature hereby finds and declares all of the following:

(a) This division requires cities and counties to divert 25 percent of all solid waste from landfills and transformation facilities by 1995

and 50 percent by 2000. As of 1990, the overall diversion rate in the state was 12 percent.

(b) California's source reduction, recycling, and composting efforts need to increase greatly if local jurisdictions are to meet the 25-percent and the 50-percent diversion requirements.

(c) Market development is the key to increased, cost-effective recycling. Market development includes activities that strengthen demand by manufacturers and end-use consumers for recyclable materials collected by municipalities, nonprofit organizations, and private entities.

(d) Developing markets for recyclable materials creates opportunities that will reindustrialize California. The board estimates that the development of markets for recyclable materials may create over 20,000 jobs in California's manufacturing sector, an additional 25,000 jobs in the sorting and processing fields, and an unestimated number of jobs in other fields that may develop through full implementation of this division.

(e) The board is authorized to conduct individual market development activities, but is not presently required to implement a comprehensive plan that addresses the full range of market development needs.

SEC. 9. Section 42005 of the Public Resources Code is amended to read:

42005. (a) The board shall develop a comprehensive market development plan using existing resources, that will stimulate market demand in the state for postconsumer waste material and secondary waste material generated in the state.

(b) The board's market development plan shall include, but shall not be limited to, achieving all of the following goals:

(1) Increasing market demand for postconsumer waste materials and secondary waste materials available due to California's source reduction and recycling programs.

(2) Increasing demand for recycled content products, especially high quality, value-added products.

(3) Promoting efficient local waste diversion systems which yield high quality, industrially usable feedstocks.

(4) Promoting the competitive collection and use of secondary waste materials.

(c) The board's development plan shall also include efforts to encourage and promote cooperative, regional programs to expand markets for recycled material. These programs shall include activities to address problems and opportunities that are unique to rural, urban, and suburban areas of the state.

(d) The board shall develop a plan, using existing resources, to provide assistance to local agencies when requested by a city, county, or regional agency, in the implementation of cost-effective programs that provide a quality supply of recycled materials for markets.

(e) The board shall, no later than September 1, 1998, submit a report to the Governor and the Legislature which details the following:

(1) Regulations and procedures of state agencies regarding purchasing materials, supplies, equipment and other items made from recycled materials.

(2) Regulations and procedures of state agencies regarding specification development and the inclusion of recycled materials in those specifications.

(3) Any steps state agencies, both collectively and individually, could take to increase their use of recycled materials or purchase products made from recycled materials, and potential effects on the recycled materials markets.

SEC. 10. Section 42010 of the Public Resources Code is amended to read:

42010. (a) The local governing body may, either by ordinance or resolution, upon the recommendation of the appropriate land use planning agency, propose eligible parcels of property within its jurisdiction as a recycling market development zone.

(b) The proposal of a recycling market development zone shall be based upon the following findings by the local governing body:

(1) The current waste management practices and conditions are favorable to the development of postconsumer waste material markets.

(2) The designation as a recycling market development zone is necessary to assist in attracting private sector recycling investments to the area.

(c) (1) The Recycling Market Development Revolving Loan Subaccount is hereby created in the account for the purpose of providing loans for purposes of the Recycling Market Development Revolving Loan Program established pursuant to this article.

(2) Notwithstanding Section 13340 of the Government Code, the funds deposited in the subaccount are hereby continuously appropriated to the board without regard to fiscal year for making loans pursuant to this article.

(3) The board may, upon appropriation by the Legislature in the annual Budget Act, expend interest earnings on funds in the subaccount for administrative expenses incurred in carrying out the Recycling Market Development Revolving Loan Program.

(4) The money from any loan repayments and fees, including, but not limited to, principal and interest repayments, fees and points, recovery of collection costs, income earned on any asset recovered pursuant to a loan default, and funds collected through foreclosure actions, shall be deposited in the subaccount.

(5) All interest accruing on interest payments from loan applicants shall be deposited in the subaccount.

(6) The board may make low-interest loans to local governing bodies and private business entities within a recycling market

development zone from money in the subaccount for the purpose of assisting the board and local agencies in complying with Section 40051 and to assist counties and cities in complying with Section 41780.

(7) The board shall establish and collect fees for applications for loans authorized by this section. The application fee shall be set at a level that is sufficient to fund the board's cost of processing applications for loans. In addition, the board shall establish a schedule of fees, or points, for loans which are entered into by the board, to fund the board's administration of the revolving loan program.

(8) The board may, upon appropriation by the Legislature in the annual Budget Act, expend money in the subaccount for the administration of the Recycling Market Development Revolving Loan Program. In addition, the board may fund administration of the revolving loan program from the account upon appropriation by the Legislature in the annual Budget Act. However, funding for the administration of the revolving loan program from the account shall be provided only if there are not sufficient funds in the subaccount to fully fund administration of the program.

(9) The board, pursuant to subdivision (a) of Section 47901, may set aside funds for the purposes of paying costs necessary to protect the state's position as a lender-creditor. These costs shall be broadly construed to include, but not be limited to, foreclosure expenses, auction fees, title searches, appraisals, real estate brokerage fees, attorney fees, mortgage payments, insurance payments, utility costs, repair costs, removal and storage costs for repossessed equipment and inventory, and additional expenditures to purchase a senior lien in foreclosure or bankruptcy proceedings.

(d) Loans made pursuant to subdivision (c) shall be subject to all of the following requirements:

(1) The terms of any approved loan shall be specified in a loan agreement between the borrower and the board. The loan agreement shall include a requirement that the failure to comply with the agreement shall result in any remaining unpaid amount of the loan, with accrued interest, being immediately due and payable. Notwithstanding any term of the agreement, any recipient of a loan that the board approves shall repay the principal amount, plus interest on the basis of the rate of return for money in the Surplus Money Investment Fund at the time of the loan commitment. Except as provided in subdivision (g), all money received as repayment and interest on loans made pursuant to this section shall be deposited in the subaccount.

(2) The term of any loan made pursuant to this section shall be not more than 10 years.

(3) The board shall approve only those loan applications which demonstrate the applicant's ability to repay the loan. The highest priority for funding shall be given to projects which demonstrate that

the project will increase market demand for recycling the project's type of postconsumer waste material.

(4) The board shall finance not more than one-half of the cost of the project, or not more than one million dollars ($1,000,000) for loans to the project, whichever is less.

(5) (A) The board shall encourage applicants to seek participation from private financial institutions or other public agencies. For purposes of enabling the board and local agencies to comply with Sections 40051 and 41780, the board may, on a pilot basis, participate, in an amount not to exceed five hundred thousand dollars ($500,000), in the Capital Access Loan Program as provided in Article 8 (commencing with Section 44559) of Chapter 1 of Division 27 of the Health and Safety Code.

(B) The board may participate in other state and federal lending programs that leverage funds based upon the ongoing success of the pilot program described in subparagraph (A).

(6) The Department of Finance may audit the expenditure of the proceeds of any loan made pursuant to this section.

(e) Upon authorization by the Legislature in the annual Budget Act, the Controller shall transfer the sum of five million dollars ($5,000,000) from the account to the subaccount for the purpose of making loans pursuant to this section. Commencing July 1, 2000, upon authorization by the Legislature in the annual Budget Act, the amount of the funds transferred pursuant to this section shall be a sum not to exceed five million dollars ($5,000,000) as necessary to meet anticipated loan demand. Those amounts shall be a loan to the subaccount, repayable with interest to the account at the rate of return for money in the Surplus Money Investment Fund.

(f) The board shall, as part of the annual report to the Legislature, pursuant to Section 40507, include a report on the performance of the Recycling Market Development Revolving Loan Program, including the number and size of loans made, characteristics of loan recipients, projected loan demand, and the cost of administering the program.

(g) All money remaining in the subaccount on July 1, 2006, and all money received as repayment and interest on loans shall, as of July 1, 2006, be transferred to the account and any money due and outstanding on loans as of July 1, 2006, shall be repaid to the board and deposited by the board in the account until paid in full, except that, upon authorization by the Legislature in the annual Budget Act, interest earnings may be expended for administrative costs associated with the collection of outstanding loan accounts.

(h) (1) Except as provided in paragraph (2), this section shall become inoperative on July 1, 2006, and as of January 1, 2007, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1998, deletes or extends the dates on which it becomes inoperative and is repealed.

(2) The repeal of this section pursuant to paragraph (1) shall not extinguish any loan obligation or the authority of the state to pursue appropriate actions for the collection of a loan.

SEC. 11. Section 42024 is added to the Public Resources Code, to read:

42024. The board, the Trade and Commerce Agency, the Treasurer, and other appropriate state agencies shall, to the extent feasible and as appropriate, coordinate activities that will leverage financing for market development projects and encourage joint activities to strengthen markets for recycled materials.

SEC. 12. Section 42241.5 is added to the Public Resources Code, to read:

42241.5. The board may develop a program to increase the use of compost products in agricultural applications. The program may include, but shall not be limited to, the following:

(a) Identification of federal, state, and local financial assistance.

(b) Cooperative efforts with appropriate federal and state agencies.

SEC. 13. Section 42242 of the Public Resources Code is repealed.

CHAPTER 673

An act to amend Section 2401 of the Business and Professions Code, and to amend Section 1206 of the Health and Safety Code, relating to medicine.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) Small, freestanding, nonprofit research institutes are important in transferring new health science technology to the public.

(b) The development of new medical technology is capital-intensive.

(c) Small, freestanding, nonprofit institutes can fill important research needs by performing research that would be financially unacceptable to for-profit entities.

(d) In order to obtain general acceptance of a new technology by third-party payers, small, freestanding, nonprofit institutes may need to provide clinical services to obtain clinical data necessary for a new procedure's general acceptance.

(e) Some of these procedures may be reimbursed by third-party payers, and this reimbursement, in turn, can fund additional medical research.

(f) The Legislature intends that small nonprofit research institutes that fit within the qualifications set forth in this act be organized and operated exclusively for research purposes, but at the same time be able to obtain reimbursement where necessary to achieve payer acceptance of new and emerging technology.

(g) The Legislature reaffirms that Section 2400 of the Business and Professions Code provides an important protection for patients and physicians from inappropriate intrusions into the practice of medicine and further intends that the nonprofit institutes not interfere with, control, or otherwise direct a physician and surgeon's professional judgment.

(h) The Legislature further intends that the nonprofit institutes not become an active participant in the commercial practice of medicine or otherwise engage in direct patient care activities on a routine basis.

SEC. 2. Section 2401 of the Business and Professions Code is amended to read:

2401. (a) Notwithstanding Section 2400, a clinic operated primarily for the purpose of medical education by a public or private nonprofit university medical school, which is approved by the Division of Licensing or the Osteopathic Medical Board of California, may charge for professional services rendered to teaching patients by licensees who hold academic appointments on the faculty of the university, if the charges are approved by the physician and surgeon in whose name the charges are made.

(b) Notwithstanding Section 2400, a clinic operated under subdivision (p) of Section 1206 of the Health and Safety Code may employ licensees and charge for professional services rendered by those licensees. However, the clinic shall not interfere with, control, or otherwise direct a physician and surgeon's professional judgment in a manner prohibited by Section 2400 or any other provision of law.

SEC. 3. Section 1206 of the Health and Safety Code is amended to read:

1206. This chapter does not apply to the following:

(a) Except with respect to the option provided with regard to surgical clinics in paragraph (1) of subdivision (b) of Section 1204 and, further, with respect to specialty clinics specified in paragraph (2) of subdivision (b) of Section 1204, any place or establishment owned or leased and operated as a clinic or office by one or more licensed health care practitioners and used as an office for the practice of their profession, within the scope of their license, regardless of the name used publicly to identify the place or establishment.

(b) Any clinic directly conducted, maintained or operated by the United States or by any of its departments, officers, or agencies, and any primary care clinic specified in subdivision (a) of Section 1204 which is directly conducted, maintained, or operated by this state or by any of its political subdivisions or districts, or by any city. Nothing

in this subdivision precludes the state department from adopting regulations which utilize clinic licensing standards as eligibility criteria for participation in programs funded wholly or partially under Title XVIII or XIX of the federal Social Security Act.

(c) Any clinic conducted, maintained, or operated by a federally recognized Indian tribe or tribal organization, as defined in Section 450 or 1601 of Title 25 of the United States Code, and which is located on land recognized as tribal land by the federal government.

(d) Clinics conducted, operated, or maintained as outpatient departments of hospitals.

(e) Any facility licensed as a health facility under Chapter 2 (commencing with Section 1250).

(f) Any freestanding clinical or pathological laboratory licensed under Chapter 3 (commencing with Section 1200) of Division 2 of the Business and Professions Code.

(g) A clinic operated by, or affiliated with, any institution of learning which teaches a recognized healing art and is approved by the state board or commission vested with responsibility for regulation of the practice of that healing art.

(h) A clinic which is operated by a primary care community or free clinic and which is operated on separate premises from the licensed clinic and is only open for limited services of no more than 20 hours a week. An intermittent clinic as described in this paragraph shall, however, meet all other requirements of law, including administrative regulations and requirements, pertaining to fire and life safety.

(i) The offices of physicians in group practice who provide a preponderance of their services to members of a comprehensive group practice prepayment health care service plan subject to Chapter 2.2 (commencing with Section 1340) of Division 2.

(j) Student health centers operated by public institutions of higher education.

(k) Nonprofit speech and hearing centers, as defined in Section 1201.5. Any nonprofit speech and hearing clinic desiring an exemption under this subdivision shall make application therefor to the director, who shall grant the exception to any facility meeting the criteria of Section 1201.5. Notwithstanding the licensure exemption contained in this subdivision, a nonprofit speech and hearing center shall be deemed to be an organized outpatient clinic for purposes of qualifying for reimbursement as a rehabilitation center under the Medi-Cal Act, Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(*l*) A clinic operated by a nonprofit corporation exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954, as amended, or a statutory successor thereof, which conducts medical research and health education and provides health care to its patients through a group of 40 or more physicians and surgeons, who are independent

contractors representing not less than 10 board-certified specialties, and not less than two-thirds of whom practice on a full-time basis at the clinic.

(m) Any clinic, limited to in vivo diagnostic services by magnetic resonance imaging functions or radiological services under the direct and immediate supervision of a physician and surgeon who is licensed to practice in California. This shall not be construed to permit cardiac catheterization or any treatment modality in these clinics.

(n) A clinic operated by an employer or jointly by two or more employers for their employees only, or by a group of employees, or jointly by employees and employers, without profit to the operators thereof or to any other person, for the prevention and treatment of accidental injuries to, and the care of the health of, the employees comprising the group.

(o) A community mental health center as defined in Section 5601.5 of the Welfare and Institutions Code.

(p) (1) A clinic operated by a nonprofit corporation exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954, as amended, or a statutory successor thereof, as an entity organized and operated exclusively for scientific and charitable purposes and that satisfies all of the following requirements:

(A) Commenced conducting medical research on or before January 1, 1982, and continues to conduct medical research.

(B) Conducted research in, among other areas, prostatic cancer, cardiovascular disease, electronic neural prosthetic devices, biological effects and medical uses of lasers, and human magnetic resonance imaging and spectroscopy.

(C) Sponsored publication of at least 200 medical research articles in peer-reviewed publications.

(D) Received grants and contracts from the National Institutes of Health.

(E) Held and licensed patents on medical technology.

(F) Received charitable contributions and bequests totaling at least five million dollars ($5,000,000).

(G) Provides health care services to patients only:

(i) In conjunction with research being conducted on procedures or applications not approved or only partially approved for payment (I) under the Medicare program pursuant to Section 1359y (a)(1)(A) of Title 42 of the United States Code, or (II) by a health care service plan registered under Chapter 2.2 (commencing with Section 1340) of Division 2 or a disability insurer regulated under Chapter 1 (commencing with Section 10110) of Part 2 of Division 2 of the Insurance Code; provided that services may be provided by the clinic for an additional period of up to three years following such approvals, but only to the extent necessary to maintain clinic expertise in the procedure or application for purposes of actively

providing training in the procedure or application for physicians and surgeons unrelated to the clinic.

(ii) Through physicians and surgeons who, in the aggregate, devote no more than 30 percent of their professional time for the entity operating, the clinic, on an annual basis, to direct patient care activities for which charges for professional services are paid.

(H) Makes available to the public the general results of its research activities on at least an annual basis, subject to good faith protection of proprietary rights in its intellectual property.

(I) Is a freestanding clinic, whose operations under this subdivision are not conducted in conjunction with any affiliated or associated health clinic or facility defined under Division 2 (commencing with Section 1200), except a clinic exempt from licensure under subdivision (m). For purposes of this subparagraph, a freestanding clinic is defined as "affiliated" only if it directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a clinic or health facility defined under Division 2 (commencing with Section 1200), except a clinic exempt from licensure under subdivision (m). For purposes of this subparagraph, a freestanding clinic is defined as "associated" only if more than 20 percent of the directors or trustees of the clinic are also the directors or trustees of any individual clinic or health facility defined under Division 2 (commencing with Section 1200), except a clinic exempt from licensure under subdivision (m). Any activity by a clinic under this subdivision in connection with an affiliated or associated entity shall fully comply with the requirements of this subdivision. This subparagraph shall not apply to agreements between a clinic and any entity for purposes of coordinating medical research.

(2) This subdivision shall remain operative only until January 1, 2003. Prior to extending or deleting that operative date, the Legislature shall receive a report from each clinic meeting the criteria of this subdivision and any other interested party concerning the operation of the clinic's activities. The report shall include, but not be limited to, an evaluation of how the clinic impacted competition in the relevant health care market, and a detailed description of the clinic's research results and the level of acceptance by the payer community of the procedures performed at the clinic. The report shall also include a description of procedures performed both in clinics governed by this subdivision and those performed in other settings.

CHAPTER 674

An act to add Section 138.7 to the Labor Code, relating to workers' compensation.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 138.7 is added to the Labor Code, to read:

138.7. (a) Except as expressly permitted in subdivision (b), a person or public or private entity not a party to a claim for workers' compensation benefits may not obtain individually identifiable information obtained or maintained by the division on that claim. For purposes of this section, "individually identifiable information" means any data concerning an injury or claim that is linked to a uniquely identifiable employee, employer, claims administrator, or any other person or entity.

(b) (1) The administrative director, or a statistical agent designated by the administrative director, may use individually identifiable information for purposes of creating and maintaining the workers' compensation information system as specified in Section 138.6.

(2) The State Department of Health Services may use individually identifiable information for purposes of establishing and maintaining a program on occupational health and occupational disease prevention as specified in Section 105175 of the Health and Safety Code.

(3) Individually identifiable information may be used by the Division of Workers' Compensation, the Division of Occupational Safety and Health, and the Division of Labor Statistics and Research as necessary to carry out their duties. The administrative director shall adopt regulations governing the access to the information described in this subdivision by these divisions. Any regulations adopted pursuant to this subdivision shall set forth the specific uses for which this information may be obtained.

(4) The administrative director shall adopt regulations allowing reasonable access to individually identifiable information by other persons or public or private entities for the purpose of bona fide statistical research. This research shall not divulge individually identifiable information concerning a particular employee, employer, claims administrator, or any other person or entity. The regulations adopted pursuant to this paragraph shall include provisions guaranteeing the confidentiality of individually identifiable information.

(5) This section shall not operate to exempt from disclosure any information that is considered to be a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) contained in an individual's file once an application for adjudication has been filed pursuant to Section 5501.5 of the Labor Code.

(c) Except as provided in subdivision (b), individually identifiable information obtained by the division is privileged and is not subject to subpoena in a civil proceeding unless, after reasonable notice to the division and a hearing, a court determines that the public interest and the intent of this section will not be jeopardized by disclosure of the information. This section shall not operate to restrict access to information by any law enforcement agency or district attorney's office or to limit admissibility of that information in a criminal proceeding.

(d) It shall be unlawful for any person who has received individually identifiable information from the division pursuant to this section to provide that information to any person who is not entitled to it under this section.

CHAPTER 675

An act to amend Section 10061 of, and to add Chapter 2.5 (commencing with Section 2718) to Division 2 of, the Public Utilities Code, relating to water corporations.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Chapter 2.5 (commencing with Section 2718) is added to Division 2 of the Public Utilities Code, to read:

CHAPTER 2.5. PUBLIC WATER SYSTEM INVESTMENT AND CONSOLIDATION ACT OF 1997

2718. This chapter shall be known and may be cited as the Public Water System Investment and Consolidation Act of 1997.

2719. The Legislature finds and declares all of the following:

(a) Public water systems are faced with the need to replace or upgrade the public water system infrastructure to meet increasingly stringent state and federal safe drinking water laws and regulations governing fire flow standards for public fire protection.

(b) Increasing amounts of capital are required to finance the necessary investment in public water system infrastructure.

(c) Scale economies are achievable in the operation of public water systems.

(d) Providing water corporations with an incentive to achieve these scale economies will provide benefits to ratepayers.

2720. (a) The commission shall use the standard of fair market value when establishing the rate base value for the distribution

system of a public water system acquired by a water corporation. This standard shall be used for ratesetting.

(1) For purposes of this section, "public water system" shall have the same meaning as set forth in Section 116275 of the Health and Safety Code.

(2) For purposes of this section, "fair market value" shall have the same meaning as set forth in Section 1263.320 of the Code of Civil Procedure.

(b) If the fair market value exceeds reproduction cost, as determined in accordance with Section 820 of the Evidence Code, the commission may include the difference in the rate base for ratesetting purposes if it finds that the additional amounts are fair and reasonable. In determining whether the additional amounts are fair and reasonable the commission shall consider whether the acquisition of the public water system will improve water system reliability, whether the ability of the water system to comply with health and safety regulations is improved, whether the water corporation by acquiring the public water system can achieve efficiencies and economies of scale that would not otherwise be available, and whether the effect on existing customers of the water corporation and the acquired public water system is fair and reasonable.

(c) The provisions of subdivisions (a) and (b) shall also be applicable to the acquisition of a sewer system by any sewer system corporation or water corporation.

(d) Consistent with the provisions of this section, the commission shall retain all powers and responsibilities granted pursuant to Sections 851 and 852.

SEC. 2. Section 10061 of the Public Utilities Code is amended to read:

10061. (a) Notwithstanding Article 1 (commencing with Section 10001) and this article, a municipal corporation, by following the provisions of this section, may lease, sell or transfer all or part of a public utility owned and operated by it for furnishing water service. As used in this section, "municipal corporation," means a city or a city and county.

(b) Any municipal corporation owning and operating a public utility for furnishing water service, a part of which or all of which public utility is operated and used for furnishing water service outside the boundaries of the municipal corporation, may lease, sell or transfer, for just compensation all or any part of the portion of the public utility located outside the boundaries of the municipal corporation to any other municipal corporation, public agency or public utility water corporation upon the terms and conditions agreed upon by the selling municipal corporation if, by resolution adopted by a majority of its legislative body, it has determined that the public utility, or portion thereof, is not necessary for supplying water to its own inhabitants and if the acquiring entity by resolution

adopted by a majority of the members of its legislative body or board of directors has concurred in the lease, sale, or transfer and the terms and conditions thereof and if the acquiring entity will be bound to render water service to the persons formerly served through the system being sold on terms and conditions which are just and reasonable and which do not unreasonably discriminate against the customers of the acquired entity.

(c) Any municipal corporation owning and operating a public utility for furnishing water service may sell or transfer, for just compensation, all or any part of the public utility located inside its municipal boundaries to any other municipal corporation, public agency, or public utility water corporation upon the terms and conditions agreed upon by the selling municipal corporation, if the sale or transfer is approved as follows:

(1) The municipal corporation, by resolution adopted by a majority of its legislative body, has determined that the public utility, or portion thereof, is not necessary for supplying water to its own inhabitants, or that its inhabitants will be provided with equal or better service by the acquiring entity on terms that are just and reasonable and do not discriminate against the customers of the acquired entity; and orders the issue submitted to the qualified voters of the municipality at a special or general election held for that purpose.

(2) The acquiring entity by resolution adopted by a majority of its legislative body or board of directors has concurred in the sale or transfer and in the terms and conditions thereof.

(3) The sale or transfer is approved by a majority of all voters voting on the issue in the election held for that purpose.

(4) The municipal corporation, public agency, or public utility water corporation proposing to acquire a municipal corporation public utility for furnishing water service shall disclose to the customers of the public water system to be acquired, not less than 30 days prior to the date of election for formal approval of the acquisition, a written statement which includes all of the following:

(A) A summary of the price and terms of the proposed acquisition.

(B) A comparison of the applicable water charges before and after the proposed acquisition.

(C) The estimated savings to be achieved or additional costs expected to result, or both, from the proposed acquisition.

(d) Subject to subdivision (e), a municipal corporation may lease a public utility furnishing water service by a resolution adopted by a majority of its legislative body and without lease term or other restrictions stated in any other provision of law.

(e) A municipal corporation acting pursuant to subdivision (c) shall specify the manner of soliciting and filing, and the method of evaluating, proposals for the acquisition of the public utility. Upon receipt and staff evaluation of a proposal or proposals the municipal corporation, if it determines that the proposal or proposals are

responsive, shall schedule a public hearing, and notice thereof shall be published in accordance with Section 6066 of the Government Code. At the hearing, the municipal corporation shall examine proposals received and staff recommendations, and without lease term or other restrictions, may lease, sell, or transfer, for just compensation, the public utility to the entity that the municipal corporation finds best qualified to continue to provide equal or better service to the customers of the system. If the resolution proposes a sale, the resolution shall place the question on the ballot at the next regularly scheduled election or at a special election called for that purpose. The municipal corporation may, in its sole discretion, reject all proposals.

(f) Any agreement entered into before September 17, 1965, between municipal corporations for the lease, sale or transfer of all or any part of a public utility owned and operated by one of the municipal corporations and furnishing water service to the inhabitants of the municipal corporation to which the lease, sale or transfer is made is hereby validated.

CHAPTER 676

An act to amend Section 14087.961 of the Welfare and Institutions Code, relating to human services.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 14087.961 of the Welfare and Institutions Code is amended to read:

14087.961. Governance of the commission shall be vested in a governing body consisting of 13 members, each of whom shall have a fiduciary duty to act in the best interest of the commission and the local initiative, nominated by the following entities, and appointed by the board of supervisors:

(a) Four members shall be nominated by the board of supervisors. No more than one member nominated by the board of supervisors shall be a member of the board of supervisors and each remaining member nominated by the board of supervisors shall possess experience as a health care administrator or as a health care provider.

(b) One member shall be a representative of private hospitals that have Medi-Cal disproportionate share status, or if that status no longer exists, that serve an equivalent patient population, who shall be nominated by the Hospital Council of Southern California.

(c) One member shall be a representative of private hospitals that do not have Medi-Cal disproportionate share status, who shall be nominated by the Hospital Council of Southern California.

(d) One member shall be a representative of free and community clinics, who shall be nominated by an entity or group recognized by the board of supervisors as representing free and community clients.

(e) One member shall be a representative of federally qualified health centers, who shall be nominated by an entity or group recognized by the board of supervisors as representing federally qualified health centers, or if that status no longer exists, an equivalent group of health centers.

(f) One member shall be a physician representative, who shall be nominated by the Los Angeles County Medical Association, in consultation with other physician associations within the county.

(g) One member shall be a representative of Knox–Keene licensed prepaid health plans, who shall be nominated by the California Association of Health Maintenance Organizations.

(h) One member shall be an individual who, at the time of being nominated, is a health care consumer. The initial nominee shall be nominated by the working group on the role of the consumer for the first nominee, and thereafter, by a process determined by the community advisory committee under which only health care consumers may nominate and vote for appointees.

(i) One member shall be a health care consumer advocate. The initial nominee shall be nominated by the working group on the role of the consumer for the first nominee, and thereafter, by a process determined by the community advisory committee under which only health care consumers may nominate and vote for appointees.

(j) One member shall be a children's health care provider representative, who shall be nominated by the Children's Planning Council as the coordinating entity for organizations and agencies providing direct services to, or advocacy for, children and families within the county.

CHAPTER 677

An act to amend Sections 2590, 2591, 2592, 3105.1, and 3135 of, and to add Section 17505.2 to, the Business and Professions Code, relating to healing arts.

[Approved by Governor October 3, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 2590 of the Business and Professions Code is amended to read:

2590. (a) For purposes of this section, "perfusion" means those functions necessary for the support, treatment, measurement, or supplementation of the cardiovascular system, circulatory system with or without the oxygenation circuit, or any combination of those activities, and to ensure the safe management of physiologic functions by monitoring the necessary parameters of those systems pursuant to an order and under the supervision of a licensed physician and surgeon.

(b) Perfusion services include, but are not limited to, all of the following:

(1) The use of extracorporeal circulation, cardiopulmonary support techniques, and other ancillary therapeutic and diagnostic technologies. "Extracorporeal circulation," as used in this section, means the diversion of a patient's blood through a heart-lung machine or a similar device that assumes the functions of the patient's heart, lungs, or both.

(2) Counterpulsation, ventricular assistance, autotransfusion, including blood conservation techniques, myocardial and organ preservation, extracorporeal life support, and isolated limb perfusion.

(3) The use of techniques involving blood management, advanced life support, and other related functions.

(c) Perfusion services also include, but only during the performance of functions described in subdivision (b), the following:

(1) The administration of pharmacological and therapeutic agents, blood products, or anesthetic agents through the extracorporeal circuit or through an intravenous line as ordered by a physician and surgeon.

(2) The performance and use of anticoagulation analysis, physiologic monitoring, blood gas and chemistry analysis, hematocrit analysis, hypothermia, hyperthermia, hemoconcentration, and hemodilution. Nothing in this paragraph shall exempt perfusionists from the requirements of Chapter 3 (commencing with Section 1200), including, but not limited to, quality assurance and equipment maintenance requirements.

(3) The observation of signs and symptoms related to perfusion services.

(4) Making a determination whether the signs and symptoms related to perfusion services exhibit abnormal characteristics.

(5) Implementation, based on observed abnormalities, of appropriate reporting, or perfusion protocols, or changes in treatment regimen, pursuant to an order by a physician and surgeon, or the initiation of emergency procedures. "Perfusion protocols" as used in this section means perfusion-related policies and protocols developed or approved by a licensed health facility or a physician and surgeon through collaboration with administrators and health professionals, including perfusionists.

(d) Commencing January 1, 1993, no person shall hold himself or herself out as a perfusionist, unless at the time of doing so the person meets the educational and examination requirements specified in subdivisions (e) and (f).

(e) Except as provided in subdivision (f), persons holding themselves out as perfusionists shall be graduates of a training program described in Section 2592 and produce satisfactory evidence of successful completion of the entire examination of the American Board of Cardiovascular Perfusion, or its successor agency, or the equivalent thereof if an equivalent is determined to be necessary by the Division of Licensing of the Medical Board of California.

(f) Any person may be deemed to have completed the equivalent of the examination and education requirements if that person is currently certified by the American Board of Cardiovascular Perfusion, or if, as of January 1, 1993, the person has practiced as a perfusionist and has annually performed a minimum of 40 cases of cardiopulmonary bypass during cardiac surgery in a licensed health facility and has done so for at least five years since January 1, 1987. For the purposes of this subdivision, "licensed health facility" means a health facility licensed in any jurisdiction within the United States.

(g) In order to continue to use the title of "perfusionist," the person shall complete the continuing education requirements of, or maintain active certification by, the American Board of Cardiovascular Perfusion, or its successor agency, or the equivalent if an equivalent is determined to be necessary by the Division of Licensing of the Medical Board of California.

(h) Any person who violates this section is guilty of a misdemeanor.

SEC. 2. Section 2591 of the Business and Professions Code is amended to read:

2591. (a) After completion of an approved perfusion training program, as defined in Section 2592, and until notification of passage of the entire examination of the American Board of Cardiovascular Perfusion, or its successor agency, that person shall identify himself or herself only as a "graduate perfusionist."

(b) The use of the title "graduate perfusionist" is valid for no more than three years from the date of completion of an approved perfusion training program.

SEC. 3. Section 2592 of the Business and Professions Code is amended to read:

2592. (a) Except as otherwise provided in Section 2590, all persons calling themselves perfusionists shall be graduates of an approved perfusion training program.

(b) For purposes of this article, an "approved perfusion training program" means a training program in perfusion reviewed by the Accreditation Committee on Perfusion Education and approved by the Commission on Accreditation of Allied Health Education Programs or its successor or the equivalent training program if an

equivalent is determined to be necessary by the Division of Licensing of the Medical Board of California.

SEC. 4. Section 3105.1 of the Business and Professions Code is amended to read:

3105.1. The use or consumption of alcoholic beverages or a narcotic drug by a person holding a certificate under this chapter to the extent or in a manner that is dangerous or injurious to the person or to any other person or to the public or to an extent that the use or consumption impairs the ability of the person holding the certificate to conduct with safety to the public the practice authorized by the certificate constitutes unprofessional conduct. Section 3120 shall apply to a violation of this section.

SEC. 5. Section 3135 of the Business and Professions Code is amended to read:

3135. In accordance with Section 125.9, the board may establish a system for the issuance of citations, and the assessment of administrative fines, as deemed appropriate by the board.

SEC. 6. Section 17505.2 is added to the Business and Professions Code, to read:

17505.2. (a) It is unlawful for a person to represent himself or herself as a recreation therapist, to represent the services he or she performs as recreation therapy, or to use terms set forth in subdivision (c), unless he or she meets all of the following requirements:

(1) Graduation from an accredited college or university with a minimum of a baccalaureate degree in recreation therapy or in recreation and leisure studies with a specialization in recreation therapy. Alternatively, a person who does not have one of the preceding degrees may qualify if he or she has a baccalaureate degree in a specialization acceptable for certification or eligible for certification by any accrediting body specified in paragraph (2).

(2) Current certification or eligibility for certification as a recreation therapist by the California Board of Recreation and Park Certification, the National Council for Therapeutic Recreation Certification, Inc..

(b) No person shall represent himself or herself as a recreation therapist assistant, or represent the services he or she performs as being in any way related to recreation therapy, unless he or she, at a minimum, has current certification or has eligibility for certification by the California Board of Recreation and Park Certification or the National Council for Therapeutic Recreation Certification, Inc., as a recreation therapist assistant.

(c) A person who does not meet the requirements of subdivision (a) or (b) may not use any of the following words or abbreviations in connection with his or her services, name, or place of business:

(1) Recreation therapist registered.

(2) Recreation therapist certified.

(3) Certified therapeutic recreation specialist.

(4) Recreation therapist.
(5) Recreation therapist assistant registered.
(6) Certified therapeutic recreation assistant.
(7) RTR.
(8) RTC.
(9) CTRS.
(10) RT.
(11) RTAR.
(12) CTRA.

(d) For purposes of subdivision (c), the abbreviation RT shall not be construed to include rehabilitation therapist or respiratory therapist.

(e) Any person injured by a violation of this section may bring a civil action and may recover one thousand five hundred dollars ($1,500) for the first violation and two thousand five hundred dollars ($2,500) for each subsequent violation. This is the sole remedy for a violation of this section.

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 678

An act to add and repeal Section 46101 of, and to add and repeal Part 26.4 (commencing with Section 46800) of, the Education Code, and to add and repeal Article 18.9 (commencing with Section 749.5) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor October 4, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 46101 is added to the Education Code, to read:

46101. (a) Notwithstanding any other provision of law, a high school academy, as defined in Section 47650, may operate on the basis

of an extended instructional day of up to 11 hours in duration, provided that at least two meals are made available to each pupil during that extended instructional day.

(b) 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. 2. Part 26.4 (commencing with Section 46800) is added to the Education Code, to read:

PART 26.4. HIGH SCHOOL ACADEMIES FOR AT-RISK PUPILS

46800. (a) In the County of San Bernardino the county superintendent of schools, with the approval of the county board of education and the board of supervisors, may establish and maintain classes or schools for at-risk pupils in any high school academy for the purpose of providing instruction in civic, vocational, literacy, health, homemaking, technical, and general education.

(b) For the purposes of this article:

(1) "At-risk pupil" means either of the following:

(A) A pupil who has been declared a ward of the juvenile court for the first time or is to be supervised by a probation department.

(B) A pupil who has been evaluated and identified as having at least two of the following factors, which place the pupil at a significantly greater risk of becoming a chronic juvenile or adult offender:

(i) School behavior and performance: this factor shall include at least one of the following: attendance problems, behavior problems, poor grades, or disciplinary action.

(ii) Family problems: this factor shall include at least one of the following: poor parental supervision or control, domestic violence, trauma, recent financial problems, or marital or family discord.

(iii) Substance abuse: this factor shall include the abuse, other than experimentation, of alcohol or drugs by the pupil or the pupil's parent or guardian.

(iv) Delinquent behavior: the factor shall include at least one of the following: a pattern of stealing, running away from home, or gang membership or association.

(2) "High school academy" means a school, not located within a correctional facility, that is established to service at-risk pupils.

(3) Pupils shall be referred to a high school academy by a panel composed of a school administrator, a probation officer, a law enforcement officer, and an officer or employee of the department of social services of the city or county in which the high school academy is located. As part of the referral process there shall be an assessment and exclusion from participation for those pupils who have learning disabilities, are physically or mentally disabled, or are

wards of the court pursuant to Section 300 of the Welfare and Institutions Code based on emotional, physical, or sexual abuse, unless appropriate services are provided to the pupil. No pupil shall be referred to a high school academy without the consent of the pupil and the pupil's parent or guardian to participate in the program. If either the pupil or the pupil's parent or guardian wishes to stop the pupil's participation in the program, the pupil shall be able to enroll in the school that he or she would have attended had he or she not enrolled in the high school academy.

46801. The county board of education may award diplomas or certificates to at-risk pupils in any high school academy, upon successful completion of a prescribed course of study.

46802. The county board of education may provide for maintenance on Saturday of classes for at-risk pupils at any high school academy.

46803. The sheriff or other official in charge of county correctional facilities may, subject to the approval of the board of supervisors, provide for the rehabilitation of at-risk pupils at any high school academy. This rehabilitation shall emphasize education, vocational training, and services that address the particular risk factors of pupils and their families.

46804. The board of supervisors may, by ordinance, direct the county superintendent of schools to establish and maintain classes or schools for at-risk pupils in any high school academy, established by the county. The county board of education shall have the same powers and duties with respect to these schools, including the establishment of the budget deemed necessary for the operation of the school programs, as the governing board of a school district would have were these schools maintained by a school district.

46805. The board of supervisors of the county shall transfer from the general fund of the county to the county school service fund of the county superintendent of schools sums, in excess of the amount of money received from the state by the county superintendent of schools, that the county board of education has deemed necessary to maintain the school programs in the high school academy.

46806. The average daily attendance for high school academy programs shall be computed in the manner set forth in Section 46200.

46807. This part 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, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Article 18.9 (commencing with Section 749.5) is added to Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, to read:

Article 18.9. Juvenile Crime Reduction and Education Academy Pilot Project

749.5. There is hereby established the Juvenile Crime Reduction and Education Academy Pilot Project in the County of San Bernardino. The San Bernardino County Sheriff's Department, in conjunction with the agencies and organizations described in Section 749.51, may conduct, in accordance with this article, a pilot project, pursuant to Part 26.4 (commencing with Section 46800) of the Education Code, for the purpose of reducing juvenile crime and delinquency.

749.51. In developing and implementing the pilot project, the San Bernardino County Sheriff's Department shall seek the cooperation and involvement of all of the following county and local officers, agencies, and organizations:

(a) The county superintendent of schools.

(b) The chief probation officer.

(c) The district attorney.

(d) Local chiefs of police.

(e) The juvenile court.

(f) Representatives of local social service, health, and mental health agencies.

(g) Representatives from local schools.

(h) Interested community organizations.

(i) Participating school districts.

749.52. Before implementing the pilot project, the San Bernardino County Sheriff's Department shall develop goals and performance measures to measure the effectiveness of the program. These measures shall include, but not be limited to, rates of recidivism, change in the number of first-time juvenile offenders being apprehended, and the number and percentage of juveniles who successfully complete the program or probation.

749.54. (a) The pilot project shall operate for one year from the date of the first day of instruction. The pilot project shall be evaluated through an independent assessment conducted by the Center for the Study of Correctional Education at California State University, San Bernardino, pursuant to a contract entered into between the San Bernardino County Sheriff's Department and the university. The pilot project shall be deemed successful if the following goals are equaled or exceeded:

(1) In the pilot program participant target group of juveniles who are at risk, attendance shall increase by 10 percent, behavioral problems shall decrease by 10 percent, and the expulsion rate shall decrease by 25 percent.

(2) In the pilot program participant population of first offenders, the recidivism rate shall be reduced by 20 percent.

(3) In both of the groups referenced in paragraphs (1) and (2), the number of pupils working at grade level shall increase by 25 percent in at least 50 percent of the core educational areas.

(b) The San Bernardino County Sheriff shall submit a report to the Legislature regarding the effectiveness of the pilot project on or before January 1, 2000.

(c) This article 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.

CHAPTER 679

An act to amend Sections 255, 256, 256.5, 257, 258, 260, 261, 262, and 263 of, and to add and repeal Section 660.5 of, the Welfare and Institutions Code, relating to minors.

[Approved by Governor October 4, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 255 of the Welfare and Institutions Code is amended to read:

255. The judge of the juvenile court, or in counties having more than one judge of the juvenile court the presiding judge of the juvenile court or the senior judge if there is no presiding judge, may appoint one or more persons of suitable experience, who may be judges of the municipal court or a probation officer or assistant or deputy probation officers, to serve as juvenile hearing officers on a full-time or part-time basis. A hearing officer shall serve at the pleasure of the appointing judge, and unless the appointing judge makes his or her order terminating the appointment of a hearing officer, the hearing officer shall continue to serve until the appointment of his or her successor. The board of supervisors shall determine whether any compensation shall be paid to hearing officers, not otherwise employed by a public agency or holding another public office, and shall establish the amounts and rates thereof. An appointment of a probation officer, assistant probation officer, or deputy probation officer as a juvenile hearing officer may be made only with the consent of the probation officer. A juvenile court shall be known as the Informal Juvenile and Traffic Court when a hearing officer appointed pursuant to this section hears a case specified in Section 256.

SEC. 2. Section 256 of the Welfare and Institutions Code is amended to read:

256. Subject to the orders of the juvenile court, a juvenile hearing officer may hear and dispose of any case in which a minor under the age of 18 years as of the date of the alleged offense is charged with (1) any violation of the Vehicle Code not declared to be a felony, (2) a violation of subdivision (m) of Section 602 of the Penal Code, (3) a violation of the Fish and Game Code not declared to be a felony, (4) a violation of any of the equipment and registration provisions of the Harbors and Navigation Code, (5) a violation of any provision of state or local law relating to traffic offenses, loitering or curfew, or evasion of fares on a public transportation system, as defined by Section 99211 of the Public Utilities Code, (6) a violation of Section 27176 of the Streets and Highways Code, (7) a violation of Section 640 or 640a of the Penal Code, (8) a violation of the rules and regulations established pursuant to Sections 5003 and 5008 of the Public Resources Code, (9) a violation of Section 33211.6 of the Public Resources Code, (10) a violation of Section 25658, 25658.5, 25661, or 25662 of the Business and Professions Code, (11) a violation of subdivision (f) of Section 647 of the Penal Code, (12) a misdemeanor violation of Section 594 of the Penal Code, involving defacing property with paint or any other liquid, (13) a violation of subdivision (b), (d), or (e) of Section 594.1 of the Penal Code, (14) a violation of subdivision (b) of Section 11357 of the Health and Safety Code, (15) any infraction, or (16) any misdemeanor for which the minor is cited to appear by a probation officer pursuant to subdivision (f) of Section 660.5.

SEC. 2.5. Section 256 of the Welfare and Institutions Code is amended to read:

256. Subject to the orders of the juvenile court, a juvenile hearing officer may hear and dispose of any case in which a minor under the age of 18 years as of the date of the alleged offense is charged with (1) any violation of the Vehicle Code not declared to be a felony, (2) a violation of subdivision (m) of Section 602 of the Penal Code, (3) a violation of the Fish and Game Code not declared to be a felony, (4) a violation of any of the equipment provisions of the Harbors and Navigation Code or the vessel registration provisions of the Vehicle Code, (5) a violation of any provision of state or local law relating to traffic offenses, loitering or curfew, or evasion of fares on a public transportation system, as defined by Section 99211 of the Public Utilities Code, (6) a violation of Section 27176 of the Streets and Highways Code, (7) a violation of Section 640 or 640a of the Penal Code, (8) a violation of the rules and regulations established pursuant to Sections 5003 and 5008 of the Public Resources Code, (9) a violation of Section 33211.6 of the Public Resources Code, (10) a violation of Section 25658, 25658.5, 25661, or 25662 of the Business and Professions Code, (11) a violation of subdivision (f) of Section 647 of the Penal Code, (12) a misdemeanor violation of Section 594 of the Penal Code, involving defacing property with paint or any other liquid, (13) a violation of subdivision (b), (d), or (e) of Section 594.1

of the Penal Code, (14) a violation of subdivision (b) of Section 11357 of the Health and Safety Code, (15) any infraction, or (16) any misdemeanor for which the minor is cited to appear by a probation officer pursuant to subdivision (f) of Section 660.5.

SEC. 3. Section 256.5 of the Welfare and Institutions Code is amended to read:

256.5. A juvenile hearing officer may request the juvenile court judge or referee to issue a warrant of arrest against a minor who is issued and signs a written notice to appear for any violation listed in Section 256 and who fails to appear at the time and place designated in the notice. The juvenile court judge or referee may issue and have delivered for execution a warrant of arrest against a minor within 20 days after the minor's failure to appear as promised or within 20 days after the minor's failure to appear after a lawfully granted continuance of his or her promise to appear. A juvenile hearing officer who is also a referee or juvenile court judge may personally issue the warrant of arrest.

SEC. 4. Section 257 of the Welfare and Institutions Code is amended to read:

257. (a) With the consent of the minor, a hearing before a juvenile hearing officer, or a hearing before a referee or a judge of the juvenile court, where the minor is charged with a traffic offense or a nontraffic offense as specified in this section, may be conducted upon an exact legible copy of a written notice given pursuant to Article 2 (commencing with Section 40500) of Chapter 2 of Division 17 or Section 41103 of the Vehicle Code, or an exact legible copy of a written notice given pursuant to Chapter 5C (commencing with Section 853.6) of Title 3 of Part 2 of the Penal Code when the offense charged is a violation listed in Section 256, or an exact legible copy of a citation as set forth in subdivision (e) of Section 660.5, in lieu of a petition as provided in Article 16 (commencing with Section 650).

(b) Prior to the hearing, the judge, referee, or juvenile hearing officer may request the probation officer to commence a proceeding as provided in Article 16 (commencing with Section 650), in lieu of a hearing in Informal Juvenile and Traffic Court.

SEC. 5. Section 258 of the Welfare and Institutions Code is amended to read:

258. (a) Upon a hearing conducted in accordance with Section 257, and upon either an admission by the minor of the commission of a violation charged, or a finding that the minor did in fact commit the violation, the judge, referee, or juvenile hearing officer may do any of the following:

(1) Reprimand the minor and take no further action.

(2) Direct that the probation officer undertake a program of supervision of the minor for a period not to exceed six months, in addition to or in place of the following orders.

(3) Order that the minor pay a fine up to the amount that an adult would pay for the same violation, unless the violation is otherwise

specified within this section, in which case the fine shall not exceed two hundred fifty dollars ($250). This fine may be levied in addition to or in place of the following orders and the court may waive any or all of this fine, if the minor is unable to pay. In determining the minor's ability to pay, the court shall not consider the ability of the minor's family to pay.

(4) Subject to the minor's right to a restitution hearing, order that the minor pay restitution to the victim, in lieu of all or a portion of the fine specified in paragraph (3). The total dollar amount of the fine, restitution, and any program fees ordered pursuant to paragraph (9) shall not exceed the maximum amount which may be ordered pursuant to paragraph (3). Nothing in this paragraph shall be construed to limit the right to recover damages, less any amount actually paid in restitution, in a civil action.

(5) Order that the driving privileges of the minor be suspended or restricted as provided in the Vehicle Code or, notwithstanding Section 13203 of the Vehicle Code or any other provision of law, when the Vehicle Code does not provide for the suspension or restriction of driving privileges, that, in addition to any other order, the driving privileges of the minor be suspended or restricted for a period of not to exceed 30 days.

(6) In the case of a traffic related offense, order the minor to attend a licensed traffic school, or other court approved program of traffic school instruction pursuant to Chapter 1.5 (commencing with Section 11200) of Division 5 of the Vehicle Code, to be completed by the juvenile within 60 days of the court order.

(7) Order that the minor produce satisfactory evidence that the vehicle or its equipment has been made to conform with the requirements of the Vehicle Code pursuant to Section 40150 of the Vehicle Code if the violation involved an equipment violation.

(8) Order that the minor perform community service work in a public entity or any private nonprofit entity, for not more than 50 hours over a period of 60 days, during times other than his or her hours of school attendance or employment. Work performed pursuant to this subparagraph shall not exceed 30 hours during any 30-day period. The timeframes established by this subparagraph shall not be modified except in unusual cases where the interests of justice would best be served. When the order to work is made by a referee or a traffic hearing officer, it shall be approved by a judge of the juvenile court.

For the purposes of this subparagraph, a judge, referee, or juvenile hearing officer shall not, without the consent of the minor, order the minor to perform work with a private nonprofit entity that is affiliated with any religion.

(9) In the case of a misdemeanor, order that the minor participate in and complete a counseling or educational program, or, if the offense involved a violation of a controlled substance law, a drug treatment program, if those programs are available. Any fees for

participation shall be subject to the right to a hearing as the minor's ability to pay and shall not, together with any fine or restitution order, exceed the maximum amount that may be ordered pursuant to paragraph (3).

(10) Require that the minor attend a school program without unexcused absence.

(11) If the offense is a misdemeanor committed between 10 p.m. and 6 a.m., require that the minor be at his or her legal residence at hours to be specified by the juvenile hearing officer between the hours of 10 p.m. and 6 a.m., except for a medical or other emergency, unless the minor is accompanied by his or her parent, guardian, or other person in charge of the minor. The maximum length of an order made pursuant to this paragraph shall be six months from the effective date of the order.

(12) Make any or all of the following orders with respect to a violation of the Fish and Game Code which is not charged as a felony:

(A) That the fishing or hunting license involved be suspended or restricted.

(B) That the minor work in a park or conservation area for a total of not to exceed 20 hours over a period not to exceed 30 days, during times other than his or her hours of school attendance or employment.

(C) That the minor forfeit, pursuant to Section 12157 of the Fish and Game Code, any device or apparatus designed to be, and capable of being, used to take birds, mammals, fish, reptiles, or amphibia and which was used in committing the violation charged. The judge, referee, or juvenile hearing officer shall, if the minor committed an offense which is punishable under Section 12008 of the Fish and Game Code, order the device or apparatus forfeited pursuant to Section 12157 of the Fish and Game Code.

(13) If the violation charged is of an ordinance of a city, county, or local agency relating to loitering, curfew, or fare evasion on a public transportation system, as defined by Section 99211 of the Public Utilities Code, or is a violation of Section 640 or 640a of the Penal Code, make the order that the minor shall perform community service for a total time not to exceed 20 hours over a period not to exceed 30 days, during times other than his or her hours of school attendance or employment.

(b) The judge, referee, or juvenile hearing officer shall retain jurisdiction of the case until all orders made under this section have been fully complied with.

SEC. 6. Section 260 of the Welfare and Institutions Code is amended to read:

260. A juvenile hearing officer shall promptly furnish a written report of his or her findings and orders to the clerk of the juvenile court. The clerk of the juvenile court shall promptly transmit an abstract of those findings and orders to the Department of Motor Vehicles.

SEC. 7. Section 261 of the Welfare and Institutions Code is amended to read:

261. Subject to the provisions of Section 262, all orders of a juvenile hearing officer shall be immediately effective.

SEC. 8. Section 262 of the Welfare and Institutions Code is amended to read:

262. Upon motion of the minor or his or her parent or guardian for good cause, or upon his or her own motion, a judge of the juvenile court may set aside or modify any order of a juvenile hearing officer, or may order or himself or herself conduct a rehearing. If the minor or parent or guardian has made a motion that the judge set aside or modify the order or has applied for a rehearing, and the judge has not set aside or modified the order or ordered or conducted a rehearing within 10 days after the date of the order, the motion or application shall be deemed denied as of the expiration of that period.

SEC. 9. Section 263 of the Welfare and Institutions Code is amended to read:

263. At any time prior to the final disposition of a hearing pursuant to Section 257, the judge, referee, or juvenile hearing officer may, on motion of the minor, his or her parent, or guardian, or on its own motion, transfer the case to the county of the minor's residence for further proceedings pursuant to Sections 258, 260, 261, and 262.

SEC. 10. Section 660.5 is added to the Welfare and Institutions Code, to read:

660.5. (a) This section shall be known as the Expedited Youth Accountability Program. It shall be operative in the superior court in Los Angeles County. It shall also be operative in any other county in which a committee consisting of the sheriff, the chief probation officer, the district attorney, the public defender, and the presiding judge of the superior court votes to participate in the program, upon approval by the board of supervisors.

(b) It is the intent of the Legislature to hold nondetained, delinquent youth accountable for their crimes in a swift and certain manner.

(c) Each county participating in the Expedited Youth Accountability Program shall establish agreed upon time deadlines for law enforcement, probation, district attorney, and court functions which shall assure that a case which is to proceed pursuant to this section shall be ready to be heard within 60 calendar days after the minor is cited to the court.

(d) (1) Notwithstanding Sections 658, 659, and 660, if a minor is not detained for any misdemeanor or felony offense and is not cited to Informal Juvenile and Traffic Court pursuant to paragraphs (1) to (15), inclusive, of Section 256 and Section 853.6a of the Penal Code, the peace officer or probation officer releasing the minor shall issue a citation and obtain a written promise to appear in juvenile court, or record the minor's refusal to sign the promise to appear and serve a notice to appear in juvenile court. The appearance shall not be set

for more than 60 calendar days nor less than 10 calendar days from the issuance of the citation. If the 60th day falls on a court holiday, the appearance date shall be on the next date that the court is in session. The date set for the appearance of the minor shall allow for sufficient time for the probation department to evaluate eligible minors for informal handling under Section 654 or any other disposition provided by law. However, nothing in this section shall be construed to limit or conflict with Sections 653.1 and 653.5.

(2) Upon receipt of the citation and petition, but in no event less than 72 hours, excluding nonjudicial days and holidays prior to the hearing, the clerk of the juvenile court shall issue a copy of the citation and petition to the public defender or the minor's attorney of record. If a copy of the citation and petition is not provided at least 72 hours, excluding nonjudicial days and holidays prior to the hearing, it shall be grounds to request a continuance pursuant to Sections 682 and 700. At a hearing conducted under Section 700, the minor and minor's parent or guardian shall be furnished a copy of the petition and any other material required to be provided under Section 659.

(3) The original citation and promise or notice to appear shall be retained by the court if a petition is filed. In addition, there shall be three copies of the citation and promise or notice to appear, which shall be distributed as follows:

(A) One copy shall be provided to the person to whom the citation is issued.

(B) One copy shall be provided to the probation department.

(C) If a petition is requested, the second copy of the citation shall go to the district attorney along with the petition request, and the third copy shall be retained by the agency issuing the citation.

(4) The original citation shall include a copy of all police reports relating to the citation and a petition request. The citation shall contain the following information:

(A) Date, time, and location of the issuance of the citation.

(B) The name, address, telephone number if known, driver's license number, age, date of birth, sex, race, height, weight, hair color, and color of eyes of the person to whom the citation is issued.

(C) A list of the offenses and the location where the offense or offenses were committed.

(D) Date and time of the required court appearance.

(E) Address of the juvenile court where the person to whom the citation is issued is to appear.

(F) A preprinted promise to appear which is signed by the person to whom the citation is issued, or where the person refused to sign the written promise, the notice to appear.

(G) A preprinted declaration under penalty of perjury that the above information is true and correct, signed by the peace officer or probation officer issuing the citation.

(H) A statement that the failure to appear is punishable as a misdemeanor.

(e) The minor's parent or guardian shall be issued a citation in the same manner as described in subdivision (b).

(f) The willful failure to appear in court pursuant to a citation or notice issued as required pursuant to this section is a misdemeanor.

(g) (1) Notwithstanding Section 662, if a parent or guardian to whom a citation has been issued pursuant to this section fails to appear, a warrant of arrest may issue for that person. A warrant of arrest may also issue for a parent or guardian who is not personally served where efforts to effect personal service have been unsuccessful, upon an affidavit, under penalty of perjury, signed by a peace officer stating facts sufficient to establish that all reasonable efforts to locate the person have failed or that the person has willfully evaded service of process.

(2) Notwithstanding Section 663, if a minor to whom a citation has been issued pursuant to this section fails to appear, and the minor's parent or guardian has either appeared or the prerequisite conditions for issuing a warrant against the minor's parent or guardian under paragraph (1) have been met, a warrant of arrest may issue for the minor.

(3) A warrant of arrest may also issue for a minor who is not personally served where each of the following occur:

(A) Efforts to effect personal service have been unsuccessful.

(B) An affidavit is submitted under penalty of perjury, signed by a peace officer, stating facts sufficient to establish that all reasonable efforts to locate the minor have failed or that minor has willfully evaded service of process.

(C) The minor's parent or guardian has either appeared or the prerequisite conditions for issuing a warrant against the minor's parent or guardian under paragraph (1) have been met.

(h) (1) Notwithstanding Section 654 or any other provision of law, a probation officer in a county in which this subdivision is applicable may, in lieu of filing a petition or proceeding under Section 654, issue a citation in the form described in subdivision (d) to the Informal Juvenile and Traffic Court pursuant to Section 256 for any misdemeanor except the following:

(A) Any crime involving a firearm.

(B) Any crime involving violence.

(C) Any crime involving a sex-related offense.

(D) Any minor who has previously been declared a ward of the court.

(E) Any minor who has previously been referred to juvenile traffic court pursuant to this section.

(2) This subdivision shall apply only if the case will be heard by a juvenile hearing officer who meets the minimum qualifications of a juvenile court referee and only in those counties in which a committee consisting of the sheriff, the chief probation officer, the district attorney, the public defender, and the presiding judge of the superior court vote for this subdivision to apply and then only upon

approval of the board of supervisors. This approval shall be required in Los Angeles and all other counties participating in the program, and shall be in addition to that required by subdivision (a) for participation in the Expedited Youth Accountability Program.

(3) In counties in which this subdivision is applicable, the probation department shall conduct a risk and needs assessment for each minor eligible for citation to the Informal Juvenile and Traffic Court pursuant to paragraph (1). The risk and needs assessment shall consider the best interest of the minor and the protection of the community. It shall also include an assessment of whether the child has any significant problems in the home, school, or community, whether the matter appears to have arisen from a temporary problem within the family which has been or can be resolved, and whether any agency or other resource in the community is better suited to serve the needs of the child, the parent or guardian, or both.

(i) In the event that the probation officer places a minor on informal probation or cites the minor to Informal Juvenile and Traffic Court, or elects some other lawful disposition not requiring the hearing set forth in subdivision (b), the probation officer shall so inform the minor and his or her parent or guardian no later than 72 hours, excluding nonjudicial days and holidays, prior to the hearing, that a court appearance is not required.

(j) Except as modified by this section, the requirements of this chapter shall remain in full force and effect.

(k) This section shall be operative on January 1, 1998, and shall be implemented in all branches of the juvenile court in Los Angeles County on or before July 1, 1998.

(*l*) It is the intent of the Legislature that an interim hearing be conducted by appropriate policy committees in the Legislature prior to January 1, 2002, to examine the success of the program in expediting punishment for juvenile offenses, reducing delinquent behavior, and promoting greater accountability on the part of juvenile offenders.

(m) This section shall be repealed on January 1, 2003, unless that date is deleted or extended by later legislation enacted on or before that date.

SEC. 11. Section 2.5 of this bill incorporates amendments to Section 256 of the Welfare and Institutions Code proposed by both this bill and SB 810. 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 256 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 810, in which case Section 2 of this bill shall not become operative.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 680

An act to amend Section 3003 of the Penal Code, relating to parole.

[Approved by Governor October 4, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. It is the intent of the Legislature to establish a statewide Law Enforcement Automated Data System (LEADS) to provide up-to-date information regarding parolees to local law enforcement agencies based upon the successful pilot project established in San Bernardino County pursuant to Chapter 56 of the Statutes of 1994, First Extraordinary Session.

SEC. 2. Section 3003 of the Penal Code is amended to read:

3003. (a) Except as otherwise provided in this section, an inmate who is released on parole shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration.

For purposes of this subdivision, "last legal residence" shall not be construed to mean the county wherein the inmate committed an offense while confined in a state prison or local jail facility or while confined for treatment in a state hospital.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county if that would be in the best interests of the public. If the Board of Prison Terms setting the conditions of parole for inmates sentenced pursuant to subdivision (b) of Section 1168, or the Department of Corrections setting the conditions of parole for inmates sentenced pursuant to Section 1170, decides on a return to another county, it shall place its reasons in writing in the parolee's permanent record and include these reasons in the notice to the sheriff or chief of police pursuant to Section 3058.6. In making its decision, the paroling authority shall consider, among others, the following factors, giving the greatest weight to the protection of the victim and the safety of the community:

(1) The need to protect the life or safety of a victim, the parolee, a witness, or any other person.

(2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program.

(4) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.

(5) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960.

(c) The Department of Corrections, in determining an out-of-county commitment, shall give priority to the safety of the community and any witnesses and victims.

(d) In making its decision about an inmate who participated in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5, the paroling authority shall give serious consideration to releasing him or her to the county where the joint venture program employer is located if that employer states to the paroling authority that he or she intends to employ the inmate upon release.

(e) (1) The following information, if available, shall be released by the Department of Corrections to local law enforcement agencies regarding a paroled inmate who is released in their jurisdictions:

(A) Last, first, and middle name.

(B) Birth date.

(C) Sex, race, height, weight, and hair and eye color.

(D) Date of parole and discharge.

(E) Registration status, if the inmate is required to register as a result of a controlled substance, sex, or arson offense.

(F) California Criminal Information Number, FBI number, social security number, and driver's license number.

(G) County of commitment.

(H) A description of scars, marks, and tattoos on the inmate.

(I) Offense or offenses for which the inmate was convicted that resulted in parole in this instance.

(J) Address, including all of the following information:

(i) Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.

(ii) City and ZIP Code.

(iii) Date the address as provided pursuant to this subparagraph was proposed to be effective.

(K) Contact officer and unit, including all of the following information:

(i) Name and telephone number of each contact officer.

(ii) Contact unit type of each contact officer such as units responsible for parole, registration, or county probation.

(L) A digitized image of the photograph and at least a single digit fingerprint of the parolee.

(M) A geographic coordinate for the parolee's residence location for use with a Geographical Information System (GIS) or comparable computer program.

(2) The information required by this subdivision shall come from the statewide parolee data base. The information obtained from each source shall be based on the same timeframe.

(3) All of the information required by this subdivision shall be provided utilizing a computer-to-computer transfer in a format usable by a desktop computer system. The transfer of this information shall be continually available to local law enforcement agencies upon request.

(4) The unauthorized release or receipt of the information described in this subdivision is a violation of Section 11143.

(f) Notwithstanding any other law, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, a violent felony as defined in paragraphs (1) to (7), inclusive, of subdivision (c) of Section 667.5 or a felony in which the defendant inflicts great bodily injury on any person other than an accomplice that has been charged and proved as provided for in Section 12022.7 or 12022.9, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Prison Terms or the Department of Corrections finds that there is a need to protect the life, safety, or well-being of a victim or witness.

(g) The authority shall give consideration to the equitable distribution of parolees and the proportion of out-of-county commitments from a county compared to the number of commitments from that county when making parole decisions.

(h) An inmate may be paroled to another state pursuant to any other law.

(i) (1) Except as provided in paragraph (2), the Department of Corrections shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) in conformance with subdivision (e).

(2) Notwithstanding paragraph (1), the Department of Justice shall be the agency primarily responsible for the proper release of information under LEADS that relates to fingerprint cards.

SEC. 3. Funding to implement LEADS pursuant to Section 3003 of the Penal Code, as amended by this act, is contingent upon the appropriation of funds for this purpose in the annual Budget Act.

CHAPTER 681

An act to amend Section 741.2 of the Public Utilities Code, relating to telecommunications.

[Approved by Governor October 4, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 741.2 of the Public Utilities Code is amended to read:

741.2. (a) No nonpublic utility provider of telephone services, including, but not limited to, a hotel, motel, hospital, university, or similar place of temporary accommodation owning or operating message switching or billing equipment solely for the purpose of reselling services provided by a telephone corporation to its patients or guests is required to file or maintain tariff schedules.

(b) No such nonpublic utility provider of telephone services which provides service to hospital patients may charge more for any nontoll telephone call than the maximum rate of charge authorized by the commission for a nontoll call placed from a coin-activated telephone owned or operated by other than a telephone corporation plus twenty-five cents ($0.25).

(c) No such nonpublic utility provider of telephone services which provides service to hospital patients may charge more for any toll telephone call than the sum of all of the following:

(1) The applicable tariff rate or charge of the telephone corporation whose service is resold for that telephone call.

(2) The surcharge or surcharges, if any, applicable to that call if placed from a coin-activated telephone owned or operated by the telephone corporation within whose service area the nonpublic utility provider of telephone services is located, unless that surcharge is included in the tariff rate or charge for that call.

(3) Twenty-five cents ($0.25).

(d) No such nonpublic utility provider of telephone services may make any charge for any uncompleted telephone call unless notice pursuant to subdivision (e) is provided specifying the circumstances under which a charge will be made for an uncompleted call.

(e) Every nonpublic utility provider of telephone services shall display or post on or near the telephone equipment so as to be easily seen by telephone users a notice of all of the following:

(1) The charges applicable to all of the available telephone services. These charges shall be separately stated, and shall include, but not be limited to, the following information:

(A) Individual customer telephone service activation deposits or fees, if any.

(B) Charges for use of telephone services, irrespective of whether a call is completed.

(2) That these charges are consistent with this section, if applicable.

(3) The telephone number of the Consumer Affairs Division of the commission to which questions or complaints may be directed.

(f) Subdivision (e) does not require separate notices for multiple or extension telephones having the same telephone extension number.

(g) This section does not require any such nonpublic utility provider of telephone services to make any charge for the furnishing of any telephone service, and this section does not apply to any such provider that makes no charge for telephone services furnished. This section does not constitute any such provider a telephone corporation or otherwise subject it to regulation by the commission as a public utility.

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 682

An act to amend Section 68075.1 of the Education Code, relating to postsecondary education.

[Approved by Governor October 4, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 68075.1 of the Education Code is amended to read:

68075.1. Notwithstanding Section 68075, a student who is a member of the armed forces of the United States stationed in this state on active duty, except a member of the armed forces assigned for educational purposes to state-supported institutions of higher education, is entitled to resident classification at any California community college campus.

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 683

An act to amend Section 17311 of the Education Code, relating to school facilities, and making an appropriation therefor.

[Approved by Governor October 4, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 17311 of the Education Code is amended to read:

17311. (a) The Department of General Services shall make such inspection of the school buildings and of the work of construction or alteration as in its judgment is necessary or proper for the enforcement of this article and the protection of the safety of the pupils, the teachers, and the public. The school district, city, city and county, or the political subdivision within the jurisdiction of which any school building is constructed or altered shall provide for and require competent, adequate, and continuous inspection during construction or alteration by an inspector satisfactory to the architect or structural engineer and the Department of General Services. The inspector shall act under the direction of the governing board and architect or structural engineer as the board may direct. The inspector shall be responsible to the governing board for employment purposes. The inspector shall be responsible to the Department of General Services for enforcement of the plans and specifications of the school project.

(b) In order to ensure the competency and adequacy of the inspectors required under this article, the Department of General Services shall do all of the following:

(1) Revise the examination used to determine the competency of those who provide inspections pursuant to this article. The revision of the examination shall include techniques of inspection, construction, plan reading, required submittal documents, and knowledge of statutes and regulations that apply to school construction. The revision of the examination shall be done not later than 48 months after the last revision and not earlier than 36 months after the last revision.

(2) Provide training on an ongoing basis to all individuals who provide the inspections required under this article. The training shall be designed to ensure that all individuals who provide the continuous

inspection of school building construction or alteration are sufficiently knowledgeable of the rules, regulations, and standards that apply under this article.

(3) Require evaluation of the competency of those who provide inspections pursuant to this article. After an initial evaluation a reevaluation shall occur not later than 48 months after the last evaluation or reevaluation and not earlier than 36 months after the last evaluation or reevaluation. An evaluation or reevaluation shall include passage of the examination used to determine competence specified in paragraph (1) and attendance at training specified in paragraph (2).

(c) The Department of General Services may require a fee from all individuals applying for evaluation or reevaluation pursuant to subdivision (b), and a fee for the examination administered in the evaluation or reevaluation. The fees shall not be more than the reasonable costs associated with the development and administration of the examination and the training.

CHAPTER 684

An act to add and repeal Section 4032 of the Penal Code, relating to crime.

[Approved by Governor October 4, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 4032 is added to the Penal Code, to read:

4032. (a) The sheriff or other person in charge of a local correctional facility shall refer all reports of battery by gassing by persons confined in the local correctional facility to the local district attorney for prosecution.

(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 sheriff or other person in charge of the local correctional facility shall use every available means to immediately investigate all reported or suspected batteries by gassing by persons confined in the local correctional facility. If there is probable cause to believe that an inmate of a local correctional facility has committed a battery by gassing, the chief medical officer of the local correctional facility, 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 battery by gassing, 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 battery. Nothing in this subdivision shall be construed to otherwise supersede the operation of Title 8 (commencing with Section 7500).

(d) The sheriff or other person in charge of the local correctional facility shall report to the Board of Corrections, as required by the board, information about each gassing incident in the local correctional facility.

(e) The Board of Corrections shall report to the Legislature by January 1, 2000, its findings and recommendations on gassing incidents at local correctional facilities and the medical testing authorized by this section. The report may be included in the report required by Section 4501.1. The report shall include, but not be limited to, all of the following:

(1) The total number of gassing incidents at each local correctional 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 committed the batteries, including the number of inmates who have one or more prior serious or violent felony convictions.

(4) Efforts that the sheriff or other person in charge of the local correctional facility 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. 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 685

An act to add Section 11019.7 to the Government Code, relating to state agencies.

[Approved by Governor October 4, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 11019.7 is added to the Government Code, to read:

11019.7. (a) No state agency shall send any outgoing United States mail to an individual that contains personal information about that individual, including, but not limited to, the individual's social security number, telephone number, driver's license number, or credit card account number, unless that personal information is contained within sealed correspondence and cannot be viewed from the outside of that sealed correspondence.

(b) "Outgoing United States mail" for the purposes of this section includes correspondence sent via a common carrier, including, but not limited to, a package express service and a courier service.

(c) Notwithstanding subdivision (a) of Section 11000, "state agency" includes the California State University.

CHAPTER 686

An act to add and repeal Article 2.5 (commencing with Section 7076.1) of Chapter 8 of Part 1 of Division 2 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 4, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Article 2.5 (commencing with Section 7076.1) is added to Chapter 8 of Part 1 of Division 2 of the Revenue and Taxation Code, to read:

Article 2.5. Managed Audit Program

7076.1. The Legislature finds and declares that the mission of the State Board of Equalization in the administration and collection of taxes is to provide informative and responsive services to the taxpayer, to provide fair, firm, and uniform treatment of the taxpayer, and to perform these functions with quality and efficiency.

The commitment to a philosophy of service and accountability to the public can be effectively furthered through a managed audit program. As a result of a managed audit, the taxpayer will be educated as to the proper tax treatment of the issues as well as to the failings of any internal procedures, so that the taxpayer can put into place procedures and practices that will ensure compliance in the future.

The Legislature further finds that the managed audit program will permit the board to reallocate resources to revenue-generating activity and reflects an efficient approach in performing day-to-day audit work. The Legislature finds that the advantages to the state include a reduction in the number of audits subject to resolution by the administrative appeals process; a reduction in litigation; and resolution of taxability issues as a condition of the managed audit. The Legislature further finds and declares that the advantages to the taxpayer include taxpayer education; future tax compliance; taxpayer experience with the audit process; an ongoing cooperative relationship with the State Board of Equalization; decreased disruption of regular business activities; and resolution of the audit period. The Legislature finds that the managed audit program permits a person to critically examine, within the timeframe specified by the board, the internal controls and accounting records of its business enterprise in which significant tax error could occur, and to determine the correct measure of tax. The Legislature further finds that the managed audit program is a logical response to demands for efficient examinations without severely compromising work product.

7076.2. The State Board of Equalization shall determine, consistent with the efficient use of audit resources, which accounts are to be eligible for the managed audit program, provided that no person shall be required to participate in the managed audit program. Persons whose accounts are eligible for the managed audit program shall include any person who meets all of the following criteria:

(a) Any person who has not received written notification pursuant to Section 6471 that he or she is required to make prepayments of tax.

(b) Any person whose business involves few or no statutory exemptions.

(c) Any person whose business involves a single or small number of clearly defined taxability issues.

(d) Any person who agrees to participate in the managed audit program.

(e) Any person who has the resources to comply with the managed audit instructions provided by the board.

7076.3. (a) If a person's account is selected for a managed audit, the person shall review and examine the books, records, and equipment to determine any unreported liability for the audit

period, and make available all computations and records reviewed for verification by the board. The board shall identify for the person all of the following:

(1) The audit period covered by the managed audit.

(2) The types of transactions covered by the managed audit.

(3) The specific procedures the person is to follow in determining any liability.

(4) The records to be reviewed by the person.

(5) The manner in which the types of transactions are to be scheduled for review.

(6) The time period for completion of the managed audit.

(7) The time period for the payment of the liability and interest.

(8) Any other criteria as the board may require for completion of the managed audit.

(b) The information provided by the person shall be the same information that is required for the completion of any other audit that the board may conduct.

7076.4. Nothing in this article shall limit the board's authority to examine the books, papers, records, and equipment of a person under Section 7054.

7076.5. Upon completion of the managed audit and verification by the board, interest shall be computed at one-half the rate that would otherwise be imposed for liabilities covered by the audit period. Payment of the liabilities and interest shall be made within the time period specified by the board. If the requirements for the managed audit are not satisfied, the board may proceed to examine the records of the person in a manner to be determined by the board.

7076.6. The provisions of Section 6596 shall not apply to a managed audit conducted pursuant to this article.

7076.7. This article shall remain in effect only until January 1, 2001, and as of that date is repealed; however, any managed audit commenced pursuant to Section 7076.3 before January 1, 2001, may be completed by the board thereafter and the person whose account is audited shall remain eligible for the interest rate computation specified in Section 7076.5.

SEC. 2. On or before February 1, 2001, the State Board of Equalization shall submit a report to the Legislature that evaluates the programmatic and fiscal benefits of the managed audit program established by this act. The report shall, at a minimum, include all of the following:

(a) A description of measurements used to evaluate the impact of the managed audit program on audit operations.

(b) A description of the existing audit operations impacted by the managed audit program.

(c) A description of how audit operations were changed as a result of the managed audit program.

(d) Measurement of the specific benefits achieved as a result of the managed audit program, including benefits derived from resources redirected during implementation of the program.

CHAPTER 687

An act to add Section 11104.5 to the Government Code, relating to state agencies.

[Approved by Governor October 4, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 11104.5 is added to the Government Code, to read:

11104.5. (a) Notwithstanding any other provision of law, any requirement that a state agency send material, information, notices, correspondence, or other communication through the United States mail shall be deemed to include the authority for the state agency to send that material, information, notice, correspondence, or other communication by electronic mail upon the request of the recipient, unless impracticable to do so, or unless contrary to state or federal law.

(b) Any state agency may require that direct costs incurred by the agency involving the electronic transmission of information be paid by the requester pursuant to this section and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

(c) Nothing in this section shall be construed to permit an agency to act in a manner inconsistent with the standards adopted pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code).

CHAPTER 688

An act to add and repeal Sections 2260.5, 16004, and 16105 to the Business and Professions Code, and to add and repeal Chapter 1.4 (commencing with Section 24185) to Division 20 of the Health and Safety Code, relating to human cloning.

[Approved by Governor October 4, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. It is the intent of the Legislature to place a five-year moratorium on the cloning of an entire human being in order to evaluate the profound medical, ethical, and social implications that such a possibility raises. It is not the intent of the Legislature that this moratorium apply to the cloning of human cells, human tissue, or human organs that would not result in the replication of an entire human being. During this moratorium period, the State Director of Health Services should be called upon to establish a panel of representatives from the fields of medicine, religion, biotechnology, genetics, law, bioethics, and the general public to evaluate those implications, review public policy, and advise the Legislature and the Governor in this area.

SEC. 2. Section 2260.5 is added to the Business and Professions Code, to read:

2260.5. (a) A violation of Section 24185 of the Health and Safety Code, relating to human cloning, constitutes unprofessional conduct.

(b) 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. 3. Section 16004 is added to the Business and Professions Code, to read:

16004. (a) Any license issued to a business pursuant to this chapter shall be revoked for a violation of Section 24185 of the Health and Safety Code, relating to human cloning.

(b) 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. 4. Section 16105 is added to the Business and Professions Code, to read:

16105. (a) Any license issued to a business pursuant to this chapter shall be revoked for violation of Section 24185 of the Health and Safety Code, relating to human cloning.

(b) 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. 5. Chapter 1.4 (commencing with Section 24185) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 1.4. HUMAN CLONING

24185. (a) No person shall clone a human being.

(b) No person shall purchase or sell an ovum, zygote, embryo, or fetus for the purpose of cloning a human being.

(c) For purposes of this section, "clone" means the practice of creating or attempting to create a human being by transferring the nucleus from a human cell from whatever source into a human egg

cell from which the nucleus has been removed for the purpose of, or to implant, the resulting product to initiate a pregnancy that could result in the birth of a human being.

24187. For violations of Section 24185, the State Director of Health Services may, after appropriate notice and opportunity for hearing, by order, levy administrative penalties as follows:

(a) If the violator is a corporation, firm, clinic, hospital, laboratory, or research facility, by a civil penalty of not more than one million dollars ($1,000,000) or the applicable amount under subdivision (c), whichever is greater.

(b) If the violator is an individual, by a civil penalty of not more than two hundred fifty thousand dollars ($250,000) or the applicable amount under subdivision (c), whichever is greater.

(c) If any violator derives pecuniary gain from a violation of this section, the violator may be assessed a civil penalty of not more than an amount equal to the amount of the gross gain multiplied by two.

(d) The administrative penalties shall be paid to the General Fund.

24189. This chapter shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

CHAPTER 689

An act to amend Section 41712 of the Health and Safety Code, relating to air pollution.

[Approved by Governor October 4, 1997. Filed with Secretary of State October 6, 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.

(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 and the regulation of aerosol paints is not subject to subdivision (c).

(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. 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 987. 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 987, in which case Section 1 of this bill shall not become operative.

CHAPTER 690

An act to amend Section 84752 of the Education Code, to amend Sections 8545 and 14525.6 of, and to repeal Section 8544.1 of, the Government Code, to amend Section 14105.42 of, and to repeal and add Section 19640.5 of, the Welfare and Institutions Code, and to amend Section 13 of Chapter 1044 of the Statutes of 1990, relating to the State Auditor.

[Approved by Governor October 4, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 84752 of the Education Code is amended to read:

84752. (a) No community college district shall receive full-time equivalent student (FTES) funding for activities that are fully funded through another source. The Board of Governors of the California Community Colleges shall adopt regulations to implement this subdivision.

(b) The State Auditor shall report to the Legislature by January 1, 2000, on the status of community college district compliance with this section. In preparing this report, the State Auditor shall use the audit methodology used in the Bureau of State Audits Report No. 96103.

SEC. 2. Section 8544.1 of the Government Code is repealed.

SEC. 3. Section 8545 of the Government Code is amended to read:

8545. The State Auditor shall not destroy any papers or memoranda used to support a completed audit sooner than three years after the audit report is released to the public. All books, papers, records, and correspondence of the bureau pertaining to its work are public records subject to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 and shall be filed at any of the regularly maintained offices of the State Auditor, except that none of the following items or papers of which these items are a part shall be released to the public by the State Auditor, his or her employees, or members of the commission:

(a) Personal papers and correspondence of any person receiving assistance from the State Auditor when that person has requested in writing that his or her papers and correspondence be kept private and confidential. Those papers and correspondence shall become public records if the written request is withdrawn or upon the order of the State Auditor.

(b) Papers, correspondence, memoranda, or any information pertaining to any audit not completed.

(c) Papers, correspondence, or memoranda pertaining to any audit that has been completed, which papers, correspondence, or memoranda are not used in support of any report resulting from the audit.

SEC. 4. Section 14525.6 of the Government Code is amended to read:

14525.6. (a) Until January 1, 1999, or the date of the report specified in subdivision (b), whichever is earlier, the State Auditor shall annually conduct a review of allocations and expenditures at the state level of transportation funds made available by Chapters 105, 106, and 108 of the Statutes of 1989, to determine whether the purposes for which those funds are allocated and expended conform to the requirements of Chapters 105, 106, and 108 of the Statutes of

1989. Not later than March 1, 1992, and by March 1 of each year thereafter, until January 1, 1999, or the date of the report specified in subdivision (b), whichever is earlier, the State Auditor shall submit a report on the results of that review to the Governor and to the Legislature.

(b) The Joint Legislative Audit Committee may review and report on the requirements imposed on the State Auditor by subdivision (a) on or before January 1, 1999.

SEC. 5. Section 14105.42 of the Welfare and Institutions Code is amended to read:

14105.42. (a) The department shall report to the Legislature after the first three major therapeutic categories have been reviewed and contracts executed. The report shall include the estimated savings, number of manufacturers entering negotiations, number of contracts executed, number of drugs added and deleted, and impact on Medi-Cal beneficiaries and providers.

(b) The department shall provide the following data to the Legislature and to the State Auditor by January 1, 1991, and every six months thereafter:

(1) The number of drug treatment authorization requests (TAR) received by facsimile, by secondary answering system and in person for each therapeutic category.

(2) The number of drug TARS requested, approved, denied, and returned.

(3) The length of time between the TAR request and the decision, specified by type of communication such as telephone or facsimile if available.

(4) For denied TARS, the number of fair hearings requested, approved, denied and pending.

(5) The numbers of providers who were unable to submit a request or made multiple attempts because of faulty or unavailable lines of communication, if available.

(6) The numbers of complaints made by beneficiaries and providers relating to difficulty or inability to obtain a TAR response.

(7) The status of the enhancements to the TAR process specified in Section 21 of Chapter 457 of the Statutes of 1990.

(8) The number of calls on the TAR line which are not getting through.

(c) Until January 1, 1999, or the date of the report specified in subdivision (f), whichever is earlier, the State Auditor shall prepare a report by February 1, 1991, and every six months thereafter providing a summary and analysis of the data specified in subdivision (b), and a comparative analysis of changes in the TAR process using June 1, 1990, as a base. The analysis shall include a measure of increased or decreased ability to contact the department and receive a response in a shorter or greater period of time.

(d) The Bureau of State Audits shall prepare a report by January 1, 1998, on the drug program management techniques of the drug

contracting program, and the comparability of the program to other private sector third-party payers. In completing its report the bureau may consult with the department, prescribing physicians, pharmacists, drug manufacturers, representatives of beneficiaries, and others as the bureau sees fit.

(e) The department shall report to the Legislature, through the annual budget process, on the cost-effectiveness of contracts executed pursuant to Section 14105.33.

(f) The Joint Legislative audit Committee may review and report on the requirements imposed on the State Auditor by subdivision (c) on or before January 1, 1999.

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

SEC. 6. Section 19640.5 of the Welfare and Institutions Code is repealed.

SEC. 7. Section 19640.5 is added to the Welfare and Institutions Code, to read:

19640.5. (a) Commencing with the 1991–92 fiscal year, the State Auditor shall conduct a fiscal audit every third fiscal year, until January 1, 2002, and a programmatic review and audit every five years, until January 1, 2003.

(b) The Joint Legislative Audit Committee may review and report on the audit requirements imposed on the State Auditor by subdivision (a) on or before January 1, 2002, for the fiscal audit requirement, and on or before January 1, 2003, for the program review and audit requirement.

SEC. 8. Section 13 of Chapter 1044 of the Statutes of 1990 is amended to read:

Sec. 13. (a) Until January 1, 1999, or the date of the report specified in subdivision (b), whichever is earlier, the State Auditor, during the annual fiscal audits of major departments, shall include an audit of how each agency is complying with state law and regulations dealing with consultant contracts. The audit shall include, but not be limited to, the matters in paragraphs (1), (2), and (3), and shall be provided to those agencies listed in subdivision (c) of Section 10359 of the Public Contract Code. In addition to major departments, the State Auditor shall also audit consultant contract usage by a random sampling of three smaller departments and offices each year.

Matters to be considered:

(1) The extent to which each agency has complied with state law.

(2) The use or overuse of sole-source contracts.

(3) Whether the state agency has utilized the results obtained by the consultants pursuant to the contracts.

It is the intent of the Legislature that the information contained in the report be available for use in legislative budget hearings.

(b) The Joint Legislative Audit Committee may review and report on the requirements imposed on the State Auditor by subdivision (a) on or before January 1, 1999.

CHAPTER 691

An act to add Section 12803 to the Food and Agricultural Code, relating to agriculture.

[Approved by Governor October 4, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 12803 is added to the Food and Agricultural Code, to read:

12803. The director, by regulation, may exempt from all or part of the requirements of this division a pesticide exempted pursuant to 25(b) of the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136w (b)) as a pesticide that is determined to be of a character unnecessary to be subject to that act, if both of the following apply:

(a) The director individually evaluates each listed substance exempted pursuant to the federal authority and concurs in the decision by the United States Environmental Protection Agency Administrator to exempt that substance.

(b) The director excludes from the exempting regulation those specific requirements of this division that may otherwise be applicable that are necessary to protect the public health or the environment. Notwithstanding any other provision of law, the director shall retain authority to regulate any substance exempted pursuant to this section whether registered or not.

CHAPTER 692

An act to add Section 56111.13 to the Government Code, and to amend Section 99 of the Revenue and Taxation Code, relating to local agencies.

[Approved by Governor October 4, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 56111.13 is added to the Government Code, to read:

56111.13. (a) Notwithstanding Section 56110, upon approval of the commission, the City of Tehachapi may annex noncontiguous territory of not more than 1,680 acres in area, that is located in the County of Kern, and that constitutes a correctional facility. If, after the completion of the annexation, the State of California sells that territory, or any part thereof, all of the territory that is no longer owned by the state shall cease to be part of the City of Tehachapi.

(b) If territory is annexed to the City of Tehachapi pursuant to this section, the city may not annex any territory not owned by the state and not contiguous to the city although that territory is contiguous to the territory annexed pursuant to this section.

(c) When territory ceases to be part of the city pursuant to this section, the legislative body of the city shall adopt a resolution confirming the detachment of that territory from the city. The resolution shall describe the detached territory, and shall be accompanied by a map indicating the territory. Immediately upon adoption of the resolution, the city clerk shall make any filing provided for by Chapter 8 (commencing with Section 57200) of Part 4.

(d) If the territory annexed to the City of Tehachapi pursuant to this section becomes contiguous to the city, the limitations imposed by this section shall cease to apply.

(e) The City of Tehachapi may enter into an agreement with any other city under which the City of Tehachapi apportions any increase in state subventions resulting from the annexation of territory pursuant to this section.

SEC. 2. Section 99 of the Revenue and Taxation Code, as amended by Section 5 of Chapter 522 of the Statutes of 1996, is amended to read:

99. (a) For the purposes of the computations required by this chapter:

(1) In the case of a jurisdictional change, other than a city incorporation or a formation of a district as defined in Section 2215, the auditor shall adjust the allocation of property tax revenue determined pursuant to Section 96 or 96.1, or the annual tax increment determined pursuant to Section 96.5, for local agencies whose service area or service responsibility would be altered by the jurisdictional change, as determined pursuant to subdivision (b) or (c).

(2) In the case of a city incorporation, the auditor shall assign the allocation of property tax revenues determined pursuant to Section 56842 of the Government Code and the adjustments in tax revenues that may occur pursuant to Section 56845 of the Government Code to the newly formed city or district and shall make the adjustment as

determined by Section 56842 in the allocation of property tax revenue determined pursuant to Section 96 or 96.1 for each local agency whose service area or service responsibilities would be altered by the incorporation.

(3) In the case of a formation of a district as defined in Section 2215, the auditor shall assign the allocation of property tax revenues determined pursuant to Section 56842 of the Government Code to the district and shall make the adjustment as determined by Section 56842 in the allocation of property tax revenue determined pursuant to Section 96 or 96.1 for each local agency whose service area or service responsibilities would be altered by the formation.

(b) Upon the filing of an application or a resolution pursuant to the Cortese-Knox Local Government Reorganization Act of 1985 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code), but prior to the issuance of a certificate of filing, the executive officer shall give notice of the filing to the assessor and auditor of each county within which the territory subject to the jurisdictional change is located. This notice shall specify each local agency whose service area or responsibility will be altered by the jurisdictional change.

(1) (A) The county assessor shall provide to the county auditor, within 30 days of the notice of filing, a report which identifies the assessed valuations for the territory subject to the jurisdictional change and the tax rate area or areas in which the territory exists.

(B) The auditor shall estimate the amount of property tax revenue generated within the territory that is the subject of the jurisdictional change during the current fiscal year.

(2) The auditor shall estimate what proportion of the property tax revenue determined pursuant to paragraph (1) is attributable to each local agency pursuant to Section 96.1 and Section 96.5.

(3) Within 45 days of notice of the filing of an application or resolution, the auditor shall notify the governing body of each local agency whose service area or service responsibility will be altered by the amount of, and allocation factors with respect to, property tax revenue estimated pursuant to paragraph (2) that is subject to a negotiated exchange.

(4) Upon receipt of the estimates pursuant to paragraph (3) the local agencies shall commence negotiations to determine the amount of property tax revenues to be exchanged between and among the local agencies. This negotiation period shall not exceed 60 days.

The exchange may be limited to an exchange of property tax revenues from the annual tax increment generated in the area subject to the jurisdictional change and attributable to the local agencies whose service area or service responsibilities will be altered by the proposed jurisdictional change. The final exchange resolution shall specify how the annual tax increment shall be allocated in future years.

(5) In the event that a jurisdictional change would affect the service area or service responsibility of one or more special districts, the board of supervisors of the county or counties in which the districts are located shall, on behalf of the district or districts, negotiate any exchange of property tax revenues.

(6) Notwithstanding any other provision of law, the executive officer shall not issue a certificate of filing pursuant to Section 56828 of the Government Code until the local agencies included in the property tax revenue exchange negotiation, within the 60-day negotiation period, present resolutions adopted by each such county and city whereby each county and city agrees to accept the exchange of property tax revenues.

(7) In the event that the commission modifies the proposal or its resolution of determination, any local agency whose service area or service responsibility would be altered by the proposed jurisdictional change may request, and the executive officer shall grant, 15 days for the affected agencies, pursuant to paragraph (4) to renegotiate an exchange of property tax revenues. Notwithstanding the time period specified in paragraph (4), if the resolutions required pursuant to paragraph (6) are not presented to the executive officer within the 15-day period, all proceedings of the jurisdictional change shall automatically be terminated.

(8) In the case of a jurisdictional change that consists of a city's qualified annexation of unincorporated territory, an exchange of property tax revenues between the city and the county shall be determined in accordance with subdivision (e) if that exchange of revenues is not otherwise determined pursuant to either of the following:

(A) Negotiations completed within the applicable period or periods as prescribed by this subdivision.

(B) A master property tax exchange agreement among those local agencies, as described in subdivision (d).

For purposes of this paragraph, a qualified annexation of unincorporated territory means an annexation, as so described, for which proceedings before the relevant local agency formation commission are initiated, as provided in Section 56651 of the Government Code, on or after January 1, 1998, and on or before January 1, 2005.

(9) No later than the date on which the certificate of completion of the jurisdictional change is recorded with the county recorder, the executive officer shall notify the auditor or auditors of the exchange of property tax revenues and the auditor or auditors shall make the appropriate adjustments as provided in subdivision (a).

(c) Whenever a jurisdictional change is not required to be reviewed and approved by a local agency formation commission, the local agencies whose service area or service responsibilities would be altered by the proposed change, shall give notice to the State Board of Equalization and the assessor and auditor of each county within

which the territory subject to the jurisdictional change is located. This notice shall specify each local agency whose service area or responsibility will be altered by the jurisdictional change and request the auditor and assessor to make the determinations required pursuant to paragraphs (1) and (2) of subdivision (b). Upon notification by the auditor of the amount of, and allocation factors with respect to, property tax subject to exchange, the local agencies, pursuant to the provisions of paragraphs (4), (5), and (6) of subdivision (b), shall determine the amount of property tax revenues to be exchanged between and among the local agencies. Notwithstanding any other provision of law, no such jurisdictional change shall become effective until each county and city included in these negotiations agrees, by resolution, to accept the negotiated exchange of property tax revenues. The exchange may be limited to an exchange of property tax revenue from the annual tax increment generated in the area subject to the jurisdictional change and attributable to the local agencies whose service area or service responsibilities will be altered by the proposed jurisdictional change. The final exchange resolution shall specify how the annual tax increment shall be allocated in future years. Upon the adoption of the resolutions required pursuant to this section, the adopting agencies shall notify the auditor who shall make the appropriate adjustments as provided in subdivision (a). Adjustments in property tax allocations made as the result of a city or library district withdrawing from a county free library system pursuant to Section 19116 of the Education Code shall be made pursuant to Section 19116 of the Education Code, and this subdivision shall not apply.

(d) With respect to adjustments in the allocation of property taxes pursuant to this section, a county and any local agency or agencies within the county may develop and adopt a master property tax transfer agreement. The agreement may be revised from time to time by the parties subject to the agreement.

(e) (1) An exchange of property tax revenues that is required by paragraph (8) of subdivision (b) to be determined pursuant to this subdivision shall be determined in accordance with all of the following:

(A) The city and the county shall mutually select a third-party consultant to perform a comprehensive, independent fiscal analysis, funded in equal portions by the city and the county, that specifies estimates of all tax revenues that will be derived from the annexed territory and the costs of city and county services with respect to the annexed territory. The analysis shall be completed within a period not to exceed 30 days, and shall be based upon the general plan or adopted plans and policies of the annexing city and the intended uses for the annexed territory. If, upon the completion of the analysis period, no exchange of property tax revenues is agreed upon by the city and the county, subparagraph (B) shall apply.

(B) The city and the county shall mutually select a mediator, funded in equal portions by those agencies, to perform mediation for a period of not to exceed 30 days. If, upon the completion of the mediation period, no exchange of property tax revenues is agreed upon by the city and the county, subparagraph (C) shall apply.

(C) The city and the county shall mutually select an arbitrator, funded in equal portions by those agencies, to conduct an advisory arbitration with the city and the county for a period of not to exceed 30 days. At the conclusion of this arbitration period, the city and the county shall each present to the arbitrator its last and best offer with respect to the exchange of property tax revenues. The arbitrator shall select one of the offers and recommend that offer to the governing bodies of the city and the county. If the governing body of the city or the county rejects the recommended offer, it shall do so during a public hearing, and shall, at the conclusion of that hearing, make written findings of fact as to why the recommended offer was not accepted.

(2) Proceedings under this subdivision shall be concluded no more than 150 days after the initiation of proceedings before the commission, unless one of the periods specified in this subdivision is extended by the mutual agreement of the city and the county. Notwithstanding any other provision of law, except for those conditions that are necessary to implement an exchange of property tax revenues determined pursuant to this subdivision, the local agency formation commission shall not impose any fiscal conditions upon a city's qualified annexation of unincorporated territory that is subject to this subdivision.

(f) Except as otherwise provided in subdivision (g), for the purpose of determining the amount of property tax to be allocated in the 1979–80 fiscal year and each fiscal year thereafter for those local agencies that were affected by a jurisdictional change which was filed with the State Board of Equalization after January 1, 1978, but on or before January 1, 1979. The local agencies shall determine by resolution the amount of property tax revenues to be exchanged between and among the affected agencies and notify the auditor of the determination.

(g) For the purpose of determining the amount of property tax to be allocated in the 1979–80 fiscal year and each fiscal year thereafter, for a city incorporation that was filed pursuant to Sections 54900 to 54904 after January 1, 1978, but on or before January 1, 1979, the amount of property tax revenue considered to have been received by the jurisdiction for the 1978–79 fiscal year shall be equal to two-thirds of the amount of property tax revenue projected in the final local agency formation commission staff report pertaining to the incorporation multiplied by the proportion that the total amount of property tax revenue received by all jurisdictions within the county for the 1978–79 fiscal year bears to the total amount of property tax revenue received by all jurisdictions within the county for the

1977–78 fiscal year. Except, however, in the event that the final commission report did not specify the amount of property tax revenue projected for that incorporation, the commission shall by October 10, determine pursuant to Section 54790.3 of the Government Code the amount of property tax to be transferred to the city.

The provisions of this subdivision shall also apply to the allocation of property taxes for the 1980–81 fiscal year and each fiscal year thereafter for incorporations approved by the voters in June 1979.

(h) For the purpose of the computations made pursuant to this section, in the case of a district formation that was filed pursuant to Sections 54900 to 54904, inclusive, of the Government Code after January 1, 1978, but before January 1, 1979, the amount of property tax to be allocated to the district for the 1979–80 fiscal year and each fiscal year thereafter shall be determined pursuant to Section 54790.3 of the Government Code.

(i) For the purposes of the computations required by this chapter, in the case of a jurisdictional change, other than a change requiring an adjustment by the auditor pursuant to subdivision (a), the auditor shall adjust the allocation of property tax revenue determined pursuant to Section 96 or 96.1 or its predecessor section, or the annual tax increment determined pursuant to Section 96.5 or its predecessor section, for each local school district, community college district, or county superintendent of schools whose service area or service responsibility would be altered by the jurisdictional change, as determined as follows:

(1) The governing body of each district, county superintendent of schools, or county whose service areas or service responsibilities would be altered by the change shall determine the amount of property tax revenues to be exchanged between and among the affected jurisdictions. This determination shall be adopted by each affected jurisdiction by resolution. For the purpose of negotiation, the county auditor shall furnish the parties and the county board of education with an estimate of the property tax revenue subject to negotiation.

(2) In the event that the affected jurisdictions are unable to agree, within 60 days after the effective date of the jurisdictional change, and if all the jurisdictions are wholly within one county, the county board of education shall, by resolution, determine the amount of property tax revenue to be exchanged. If the jurisdictions are in more than one county, the State Board of Education shall, by resolution, within 60 days after the effective date of the jurisdictional change, determine the amount of property tax to be exchanged.

(3) Upon adoption of any resolution pursuant to this subdivision, the adopting jurisdictions or State Board of Education shall notify the county auditor who shall make the appropriate adjustments as provided in subdivision (a).

(j) For purposes of subdivision (i), the annexation by a community college district of territory within a county not previously served by a community college district is an alteration of service area. The community college district and the county shall negotiate the amount, if any, of property tax revenues to be exchanged. In these negotiations, there shall be taken into consideration the amount of revenue received from the timber yield tax and forest reserve receipts by the community college district in the area not previously served. In no event shall the property tax revenue to be exchanged exceed the amount of property tax revenue collected prior to the annexation for the purposes of paying tuition expenses of residents enrolled in the community college district, adjusted each year by the percentage change in population and the percentage change in the cost of living, or per capita personal income, whichever is lower, less the amount of revenue received by the community college district in the annexed area from the timber yield tax and forest reserve receipts.

(k) At any time after a jurisdictional change is effective, any of the local agencies party to the agreement to exchange property tax revenue may renegotiate the agreement with respect to the current fiscal year or subsequent fiscal years, subject to approval by all local agencies affected by the renegotiation.

CHAPTER 693

An act to amend Section 5652 of the Fish and Game Code, relating to pollution, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 4, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 5652 of the Fish and Game Code is amended to read:

5652. It is unlawful to deposit, permit to pass into, or place where it can pass into the waters of the state, or to abandon, dispose of, or throw away, within 150 feet of the high-water mark of the waters of the state, any cans, bottles, garbage, motor vehicle or parts thereof, rubbish, or the viscera or carcass of any dead mammal, or the carcass of any dead bird.

The abandonment of any motor vehicle in any manner that violates this section shall constitute a rebuttable presumption affecting the burden of producing evidence that the last registered owner of record, not having complied with Section 5900 of the Vehicle Code, is responsible for such abandonment and is thereby liable for the cost

of removal and disposition of the vehicle. This section prohibits the placement of a vehicle body on privately owned property along a streambank by the property owner or tenant for the purpose of preventing erosion of the streambank.

This section does not apply to a refuse disposal site which is authorized by the appropriate local agency having jurisdiction or to the depositing of such materials in a container from which the materials are routinely removed to a legal point of disposal.

This section shall be enforced by all law enforcement officers of this state.

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:

In order to eliminate water pollution and to protect California salmon and steelhead trout at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 694

An act to repeal and add Section 19622.2 of the Business and Professions Code, to amend Sections 3311 and 3332 of, and to repeal Sections 3335 and 3336 of, the Food and Agricultural Code, and to amend Sections 11272, 12470, and 16310 of the Government Code, relating to the California Exposition and State Fair, and making an appropriation therefor.

[Approved by Governor October 4, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 19622.2 of the Business and Professions Code is repealed.

SEC. 1.5. Section 19622.2 is added to the Business and Professions Code, to read:

19622.2. (a) The authority of the Department of Food and Agriculture shall include, but is not limited to, requiring the California Exposition and State Fair to meet all applicable standards prescribed by the department.

(b) The department may delegate approval authority for such matters as the department may determine to the Board of Directors of the California Exposition and State Fair if the fair complies with this section.

(c) Notwithstanding any other provision of law, the department may assume all rights, duties, and powers of the Board of Directors of the California Exposition and State Fair if the department determines 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 has been restored to solvency and is in compliance with this section.

(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 California Exposition and State Fair is insolvent, or is in imminent danger of insolvency. The court shall appoint a receiver upon showing that the fair is insolvent, or is in imminent danger of insolvency.

(e) For the purposes of this section, "insolvency" means that the California Exposition and State Fair is unable to discharge its debts as they become due in the usual course of business.

(f) The General Fund and the Fairs and Exposition Fund shall be held harmless from any debts, liabilities, settlements, judgments, or liens incurred by the California Exposition and State Fair, including any deficiency in operating funds.

SEC. 1.6. Section 3311 of the Food and Agricultural Code is amended to read:

3311. The California Exposition and State Fair is hereby created as a separate independent entity in state government. The California Exposition and State Fair shall be governed by its board of directors.

SEC. 1.7. Section 3332 of the Food and Agricultural Code is amended to read:

3332. The board may do any of the following:

(a) Contract.

(b) Accept funds or gifts of value from the United States or any person to aid in carrying out the purposes of this part.

(c) Conduct or contract for programs, either independently or in cooperation with any individual, public or private organization, or federal, state, or local governmental agency.

(d) Establish and maintain a bank checking account or a savings and loan association account, approved by the Director of Finance in accordance with Sections 16506 and 16605 of the Government

Code, for depositing funds received by the California Exposition and State Fair. Notwithstanding Section 13340 of the Government Code, all funds maintained in an account authorized by this subdivision are continuously appropriated to the board, without regard to fiscal year, to carry out this part.

(e) Establish a program for paying vendors who contract with the California Exposition and State Fair.

(f) Make or adopt all necessary orders, rules, or regulations for governing the activities of the California Exposition and State Fair. Notwithstanding Section 14, any orders, rules, or regulations adopted by the board are exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For informational purposes only, however, any order, rule, or regulation adopted by the board may be transmitted to the Office of Administrative Law for filing with the Secretary of State pursuant to Section 11343 of the Government Code.

(g) Delegate to the officers and employees of the California Exposition and State Fair the authority to appoint civil service personnel according to state civil service procedures.

(h) Operate a payroll system for paying employees, and a system for accounting for vacation and sick leave credits of employees.

(i) Delegate to the officers and employees of the California Exposition and State Fair the exercise of powers vested in the board as the board may deem desirable for the orderly management and operation of the California Exposition and State Fair.

(j) Appoint all necessary marshals and police to keep order and preserve peace at the California Exposition and State Fair premises on a year-round basis who shall have the powers of peace officers specified in Section 830.2 of the Penal Code. A peace officer of the Department of the California Highway Patrol may be employed as a peace officer while off duty from his or her regular employment, subject to those conditions as may be set forth by the Commissioner of the Department of the California Highway Patrol. At least 75 percent of the persons appointed pursuant to this subdivision shall possess the basic certificate issued by the Commission on Peace Officers Standards and Training. The remaining 25 percent may be appointed if the person has completed a Peace Officer Standards and Training certified academy or possesses a Level One Reserve Certificate (as defined in Section 832.6 of the Penal Code).

(k) With the approval of the Department of General Services, purchase, acquire, or hold real or personal property, and beautify or improve that property. Any acquisition of land or other real property is subject to the approval of the Department of General Services, and in the case of the purchase of real property, is subject to the Property Acquisition Law (Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code).

(*l*) With the approval of the Department of General Services, make permanent improvements upon publicly owned real property

adjacent to, or near the vicinity of, the real property of the California Exposition and State Fair when the improvements materially benefit the property of the California Exposition and State Fair.

(m) Lease, with the approval of the Department of General Services, any of its property for any purpose for any period of time.

(n) Use or manage any of its property, with the approval of the Department of General Services, jointly or in connection with any lessee or sublessee, for any purpose approved by the board.

(o) With the approval of the Department of General Services, pledge any and all revenues, moneys, accounts, accounts receivable, contract rights, and other rights to payment of whatever kind, pursuant to such terms and conditions as are approved by the board. Any issuance of bonds, contracts entered into, debts incurred, settlements, judgments, or liens under this section or pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, shall not directly, indirectly, or contingently obligate the state or any political subdivision thereof to levy or to pledge any form of taxation therefor or to make any appropriation for their payment. Any such bond shall contain on the face thereof a statement to the following effect: "Neither the full faith and credit nor the taxing power of the State of California is pledged to the payment of the principal of, or interest on this bond."

SEC. 2. Section 3335 of the Food and Agricultural Code is repealed.

SEC. 3. Section 3336 of the Food and Agricultural Code is repealed.

SEC. 4. Section 11272 of the Government Code is amended to read:

11272. (a) In determining or redetermining the fair share, the Department of Finance may consider the factors of cost distribution and cost estimation as it deems necessary, except that, as to the proceeds of those taxes, the use of which is restricted by Article XIX of the California Constitution, the Department of Finance shall assess only those administrative costs ascertained as being necessarily incurred in connection with highway purposes as set forth in the article. As to funds collected pursuant to Section 221 of the Food and Agricultural Code, the Department of Finance shall assess only those administrative costs incurred in connection with the enforcement of the law under which the funds were derived.

(b) In determining the share of costs to be borne by the California Exposition and State Fair, the Department of Finance shall take into account any reduction in the services provided to the California Exposition and State Fair as a consequence of the assumption of the various functions that the California Exposition and State Fair is authorized to assume by the act that amended this section during the 1997–98 Regular Legislative Session, and shall reduce the fair share of the California Exposition and State Fair accordingly. From its operating funds, the California Exposition and State Fair shall

annually reimburse the General Fund for its share of costs determined pursuant to this subdivision.

SEC. 5. Section 12470 of the Government Code is amended to read:

12470. In conformity with the accounting system prescribed by the Department of Finance pursuant to Section 13300, the Controller shall install and operate a uniform state payroll system for all state agencies except the California Exposition and State Fair and the University of California. The Controller may provide for the orderly inclusion of state agencies into the system, and may make exceptions from the operation thereof for such periods as he or she determines necessary.

SEC. 6. Section 16310 of the Government Code is amended to read:

16310. (a) When the General Fund in the Treasury is or will be exhausted, the Controller shall notify the Governor and the Pooled Money Investment Board. The Governor may order the Controller to direct the transfer of all or any part of the moneys not needed in other funds or accounts to the General Fund from those funds or accounts, as determined by the Pooled Money Investment Board, including the Surplus Money Investment Fund or the Pooled Money Investment Account. All moneys so transferred shall be returned to the funds or accounts from which they were transferred as soon as there are sufficient moneys in the General Fund to return them. No interest shall be charged or paid on any transfer authorized by this section, exclusive of the Pooled Money Investment Account, except as provided herein. This section does not authorize any transfer that will interfere with the object for which a special fund was created or any transfer from the Central Valley Water Project Construction Fund, the Central Valley Water Project Revenue Fund, or the California Water Resources Development Bond Fund.

(b) Interest shall be paid on all moneys transferred to the General Fund from the Department of Food and Agriculture Fund and from any funds retained by or in the possession of the California Exposition and State Fair pursuant to this section. With respect to all other funds, if the total moneys transferred to the General Fund in any fiscal year from any special fund pursuant to this section exceed an amount equal to 10 percent of the total additions to surplus available for appropriation as shown in the statement of operations of a prior fiscal year as set forth in the most recent published annual report of the Controller, interest shall be paid on the excess. Interest payable under this section shall be computed at a rate determined by the Pooled Money Investment Board to be the current earning rate of the fund from which transferred.

SEC. 7. All funds remaining in the California Exposition and State Fair Enterprise Fund on the effective date of this act shall be transferred to the Board of Directors of the California Exposition and

State Fair for deposit in an account maintained pursuant to subdivision (d) of Section 3332 of the Food and Agricultural Code.

CHAPTER 695

An act to amend Sections 12021, 12103, 12104, 12112, 12201, 12252, 12784, 12843, 12845, 12846, 12931, 12991, 12999.4, and 14152, and the heading of Chapter 7 (commencing with Section 12101) of Division 6 of, to amend and renumber Sections 12115.3, 12115.5, and 12115.6 of, to add Chapter 10 (commencing with Section 12400) to Division 6 of, to repeal Sections 12115, 12115.1, 12115.2, 12115.4, 12932, and 12971.5 of, the heading of Article 1.5 (commencing with Section 12115) of Chapter 7 of Division 6 of, and Article 4.6 (commencing with Section 12848) of Chapter 2 of Division 7 of, to repeal and add Sections 12841, 12842, 12844, and 12847 of, and to repeal, add, and repeal Section 12841.1 of, the Food and Agricultural Code, relating to pesticides.

[Approved by Governor October 4, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 12021 of the Food and Agricultural Code is amended to read:

12021. An application for an agricultural pest control adviser license shall be in the form prescribed by the director. Each application shall state the name and address of the applicant specified on the application and any other information required by the director. The application shall be accompanied by a fee of fifty dollars ($50) to be paid into the State Treasury to the credit of the Department of Pesticide Regulation Fund. All licenses issued under this article shall expire on December 31 of the year for which they are issued. Licenses may be renewed annually by the date of expiration through application in the form prescribed by the director and upon payment of a fee of forty dollars ($40). A penalty of ten dollars ($10) shall be assessed against any applicant who applies for a renewal of the license after the expiration date.

SEC. 2. The heading of Chapter 7 (commencing with Section 12101) of Division 6 of the Food and Agricultural Code is amended to read:

CHAPTER 7. PEST CONTROL DEALER

SEC. 3. Section 12103 of the Food and Agricultural Code is amended to read:

12103. An application for a license shall be in the form prescribed by the director. Each application shall state the name and address of the applicant specified on the application and any other information required by the director. The application shall be accompanied by a fee of one hundred dollars ($100) to be paid into the State Treasury to the credit of the Department of Pesticide Regulation Fund. All licenses issued under this article shall expire on December 31 of the year for which they are issued.

To the amount of the license fee shall be added, as an additional license fee, fifty dollars ($50) for each branch salesyard, store, or sales location that is owned and operated by the applicant in the state or in other states when doing business from that location within the state.

SEC. 4. Section 12104 of the Food and Agricultural Code is amended to read:

12104. The license for a pest control dealer may be renewed annually upon application in the form prescribed by the director, accompanied by a fee of one hundred dollars ($100), for each license and fifty dollars ($50) for each branch salesyard, store, or sales location by the date of expiration. These fees shall be paid into the State Treasury to the credit of the Department of Pesticide Regulation Fund.

SEC. 5. Section 12112 of the Food and Agricultural Code is amended to read:

12112. Notwithstanding Section 11513, 50 percent of the moneys derived under this chapter shall be available to the director to cover the costs of establishing and administering the pest control dealer's licensing program pursuant to this chapter. The director shall pay 50 percent of the moneys collected to the counties that employ commissioners and the moneys shall be used by the counties for the enforcement and administration of this chapter. The department shall determine and pay to each county one-half of the deposited application fees and renewal fees that are received from applicants whose principal address at the time of payment, as determined by the director, was located in the county, and the amount of the payments to counties is hereby appropriated from the Department of Pesticide Regulation Fund.

SEC. 6. The heading of Article 1.5 (commencing with Section 12115) of Chapter 7 of Division 6 of the Food and Agricultural Code is repealed.

SEC. 7. Section 12115 of the Food and Agricultural Code is repealed.

SEC. 8. Section 12115.1 of the Food and Agricultural Code is repealed.

SEC. 9. Section 12115.2 of the Food and Agricultural Code is repealed.

SEC. 10. Section 12115.3 of the Food and Agricultural Code is amended and renumbered to read:

12114. (a) Each licensed pest control dealer, and each person who is required to be licensed as a pest control dealer pursuant to Section 12101, shall maintain at his or her principal place of business the records of its purchases, sales, and distributions of pesticides into or within this state, including those of its branch locations, for four years. Each dealer shall also maintain the pesticide broker license number of any pesticide broker from whom the dealer purchased pesticides registered by the director and labeled for agricultural use. The records shall be available for audit by the director.

(b) Each licensed pest control dealer, and each person who is required to be licensed as a pest control dealer pursuant to Section 12101, shall report quarterly to the director the total dollars of sales and total pounds or gallons sold into or within this state of each pesticide labeled for agricultural use, for all sales subject to Sections 12841 and 12841.1. The quarterly report shall be in the form prescribed by the director and shall include information from the dealer's licensed branch locations, if any, and any other information specified on the form or required by the director. The report shall include a certification, under penalty of perjury, that the information contained in the report is true and correct. The report shall accompany payment of assessments required by Sections 12841 and 12841.1.

SEC. 11. Section 12115.4 of the Food and Agricultural Code is repealed.

SEC. 12. Section 12115.5 of the Food and Agricultural Code is amended and renumbered to read:

12115. Any licensed pest control dealer, or any person who is required to be licensed as a pest control dealer pursuant to Section 12101, who purchases pesticide products that are registered by the director pursuant to Chapter 2 (commencing with Section 12751) of Division 7 and labeled for agricultural use from a person other than a registrant or a licensed pest control dealer, shall report in writing the name, address, telephone number, and pesticide broker license number issued by the director, if any, of those persons to the director annually, by December 1 each year.

SEC. 13. Section 12115.6 of the Food and Agricultural Code is amended and renumbered to read:

12116. It is unlawful for a licensed pest control dealer to purchase for sale in this state a pesticide that is labeled for agricultural use except from a registrant, a pest control dealer licensed pursuant to Section 12107, or a pesticide broker licensed pursuant to Section 12402.

SEC. 14. Section 12201 of the Food and Agricultural Code is amended to read:

12201. An application for a qualified applicator license shall be in a form prescribed by the director. Each application shall state the name and address of the applicant specified on the application and any other information required by the director. The application shall

be accompanied by a fee of forty dollars ($40). These fees shall be paid into the State Treasury to the credit of the Department of Pesticide Regulation Fund.

SEC. 15. Section 12252 of the Food and Agricultural Code is amended to read:

12252. (a) An application for a pest control dealer designated agent license shall be in the form prescribed by the director. Each application shall state the name and address of the applicant specified on the application and any other information required by the director. The application shall be accompanied by a fee of fifteen dollars ($15). These fees shall be paid into the State Treasury to the credit of the Department of Pesticide Regulation Fund.

(b) All licenses issued pursuant to this article shall expire on December 31 of the year for which they are issued.

(c) Licenses may be renewed annually upon application in the form prescribed by the director and upon payment of a fee of fifteen dollars ($15). A penalty of ten dollars ($10) shall be added to any license renewal fee that is not paid by the date of expiration of the previously issued license.

SEC. 16. Chapter 10 (commencing with Section 12400) is added to Division 6 of the Food and Agricultural Code, to read:

CHAPTER 10. PESTICIDE BROKERS

12400. It is unlawful for any person, other than the registrant or pest control dealer licensed pursuant to Section 12107, to sell or distribute into or within this state any pesticide products that have been registered by the director and that are labeled for agricultural use, unless the person is licensed by the director as a pesticide broker. This chapter does not apply to persons who operate as sellers or distributors of pesticides that are labeled only for nonagricultural uses.

12401. (a) An application for a pesticide broker license, or renewal of a license, shall be in the form prescribed by the director. Each application for a license, or license renewal, shall state the name and address of the applicant, and any other information specified on the application or required by the director, and be accompanied by a fee of one hundred dollars ($100).

(b) An additional license fee, or license renewal fee, of fifty dollars ($50) shall be paid for each branch location of the applicant that sells or distributes into or within the state any pesticide products that are labeled for agricultural use.

12402. The director shall issue to each applicant that satisfies the requirements of this chapter a pesticide broker license that shall be valid for one year from the date of issuance, unless the license is revoked or suspended in the interim.

12403. All licenses issued pursuant to this chapter may be renewed annually upon application to the director.

12404. A penalty of twenty-five dollars ($25) shall be added to any license renewal fee that is not paid by the date of expiration of a previously issued license or license renewal.

12405. Each licensed pesticide broker that changes the address of its place of business, or that of a branch location, shall immediately provide the director written notification of the change.

12406. (a) Each licensed pesticide broker, or person who is required to be licensed as a pesticide broker pursuant to Section 12400, shall maintain at its principal place of business the records of its purchases and sales and distributions of pesticides into or within this state, including those of its branch locations, for four years. These records shall include copies of invoices showing payment of the mill assessment. The records shall be available for audit by the director or county agricultural commissioner.

(b) Each licensed pesticide broker, or person who is required to be licensed as a pesticide broker pursuant to Section 12400, shall report quarterly to the director the total dollars of sales and total pounds or gallons sold into or within this state of each pesticide labeled for agricultural use, for all sales subject to Sections 12841 and 12841.1. The quarterly report shall be in the form prescribed by the director and shall include information from the broker's licensed branch locations, if any, and any other information specified on the form or required by the director. The report shall include a certification, under penalty of perjury, that the information contained in the report is true and correct. The report shall accompany payment of assessments required by Sections 12841 and 12841.1.

12407. It is unlawful for any person required to be licensed as a pesticide broker pursuant to this chapter to make any false or fraudulent statements or misrepresent or fail to disclose any material fact in making application for a license or renewal of a license or in any reports submitted to the director, or to make any false or misleading statements concerning any products specified in Section 12847 that the person sells or distributes.

12408. The director, after a hearing, may refuse, revoke, or suspend a pesticide broker license for any violation of this division or Division 7 (commencing with Section 12500) or any regulations adopted pursuant to this division.

SEC. 17. Section 12784 of the Food and Agricultural Code is amended to read:

12784. Any money that is received by the director pursuant to this chapter shall be paid into the State Treasury to the credit of the Department of Pesticide Regulation Fund. Registration fees and assessments received pursuant to this chapter shall be expended only for the administration and enforcement of Chapter 2 (commencing with Section 12751), Chapter 3 (commencing with Section 14001), and Chapter 3.5 (commencing with Section 14101) of Division 7.

SEC. 18. Section 12841 of the Food and Agricultural Code is repealed.

SEC. 19. Section 12841 is added to the Food and Agricultural Code, to read:

12841. (a) It is unlawful for any person to sell for use in this state any pesticide products that have been registered by the director for which the mill assessment established by this article, and the regulations adopted pursuant to it, is not paid at the times specified in Section 12843.

(b) Except as provided in subdivision (d), every person who sells for use in this state a pesticide product that has been registered by the director shall pay to the director the applicable assessment. There is a rebuttable presumption that pesticide products that are sold or distributed into or within this state by any person are sold or distributed for use in this state.

(c) (1) Upon application of any registrant, the director shall determine whether a fertilizer or paper product is used as a carrier for a pesticide, and is sold in combination, and whether the mill assessment under this article shall be on the pesticide value only, when the product is designed, developed, and manufactured, and sold primarily for other than a pesticide use. If the director finds that the combination product has such a major component and is designed, developed, manufactured, and sold primarily for other than a pesticide use, the assessment provided by this article shall be paid on the equivalent percentage of the sales price of the active ingredients of the pesticide product. The director shall establish this percentage of the sales price. The percentage shall be the ratio of that portion of the sales price attributable to the pesticide portion to the total sales price of the combination product.

(2) For purposes of this section, "active ingredient" means any active ingredient that is required to be stated on the label on any registered pesticide under Section 12883.

(d) Assessments provided for in this article for sales of registered pesticides that are sold for use in this state shall be paid by the registrant except as follows:

(1) In those cases where the registrant did not first sell the pesticide into or within this state or have actual knowledge, at the time of its sale, that the pesticide would be sold for use in this state, the assessment shall be paid by the licensed pesticide broker, licensed pest control dealer, or other person who first sold the pesticide for use in this state.

(2) No person is required to pay an assessment on registered products that are labeled only for use in further manufacturing or formulating of pesticides.

(e) It has been and continues to be the intent of the Legislature that this division requires the department to register all pesticides prior to their sale for use in this state and, except as otherwise provided by law, requires the department to regulate and control the

use of pesticides in accordance with this division. Except as provided in Section 12841.1, the department shall continue to collect the assessment as provided in this article at the same rate on all registered agricultural and registered nonagricultural pesticides.

(f) (1) Except as provided in paragraph (2), the mill assessment shall be paid at the following rates per dollar of sales for all sales of pesticides for use in this state:

(A) From January 1, 1998, to March 31, 1999, inclusive, the rate shall be 15.15 mills ($0.01515) plus any additional assessment authorized by Section 12841.1.

(B) From April 1, 1999, to December 31, 2002, inclusive, the rate shall be 17.5 mills ($0.0175) plus any additional assessment authorized by Section 12841.1.

(C) Effective January 1, 2003, and thereafter, the rate shall be nine mills ($0.009).

(2) In order to avoid the accumulation of unneeded revenues, the director shall, by the adoption of an emergency regulation pursuant to subdivision (h), set the mill assessment rate lower than the rate established in subparagraphs (A) and (B) of paragraph (1) if the director determines that program needs are adequately met and that revenues collected would result in a prudent reserve in the Department of Pesticide Regulation Fund by the end of the 2001–02 fiscal year greater than two million five hundred thousand dollars ($2,500,000). In no case shall the lower mill rate result in revenues that are less than the revenues that the rate established in subparagraphs (A) and (B) of paragraph (1) would generate if each mill was valued at one million four hundred eighty-two thousand dollars ($1,482,000).

(g) The revenue collected from the mill assessment shall be deposited in the Department of Pesticide Regulation Fund, except as specified in Section 12841.1, and distributed as follows:

(1) Notwithstanding Sections 2282 and 12784, the director shall pay, in accordance with the criteria set forth in Section 12844, the following amounts to the counties as reimbursement for costs incurred by the counties in the administration and enforcement of Division 6 (commencing with Section 11401), this chapter, Chapter 3 (commencing with Section 14001), Chapter 3.4 (commencing with Section 14090), and Chapter 3.5 (commencing with Section 14101):

(A) From January 1, 1998, to March 31, 1998, inclusive, five-eighths of the money received during that period pursuant to this section.

(B) Beginning April 1, 1998, and thereafter, an amount equal to the revenue derived from 6 mills ($0.006) per dollar of sales for all pesticide sales for use in this state.

(2) All funds not otherwise distributed pursuant to this subdivision shall remain in the Department of Pesticide Regulation Fund and shall be available for expenditure, upon appropriation, to support the department's operations.

(h) Any change to the mill assessment rate established pursuant to subparagraphs (A) and (B) of paragraph (1) of subdivision (f) shall be made by the adoption of an emergency regulation and shall be determined by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Thereafter, the regulations shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and shall remain in effect for no more than four consecutive quarters. The director shall make available to the public, at least 60 days prior to the adoption of an emergency regulation establishing a new rate, the information upon which the director has calculated the new rate.

SEC. 20. Section 12841.1 of the Food and Agricultural Code is repealed.

SEC. 21. Section 12841.1 is added to the Food and Agricultural Code, to read:

12841.1. (a) Between January 1, 1998 and January 1, 2003, the director may collect an assessment, in addition to the mill assessment collected pursuant to Section 12841, for all pesticide sales for use in this state except for sales for use in this state of those nonagricultural pesticides labeled only for home, industrial, or institutional use. The director may only collect up to an additional three-fourths mill ($0.00075) per dollar of sales, as part of the rate established pursuant to Section 12841, if necessary to fund, or augment the funding for, an appropriation to the Department of Food and Agriculture to provide pesticide consultation to the department pursuant to Section 11454.2. The necessity of this additional assessment shall be determined by the Secretary of Food and Agriculture, in consultation with the director, on an annual basis after consideration of all other revenue sources, including any reserves, which may be appropriated for this purpose. The secretary's written determination, including a request for a specified additional assessment and the basis for that request, shall be provided to the department in a time and manner prescribed by the director to fulfill the requirements of Section 12841, and shall be made available to the public pursuant to the requirements of subparagraph (B) of paragraph (1) of subdivision (f) of Section 12841.

(b) The revenue collected pursuant to this section shall be deposited monthly in a separate account in the Department of Food and Agriculture Fund. These revenues shall be expended only by the Department of Food and Agriculture, upon appropriation, to provide consultation to the department pursuant to Section 11454.2. No funds may be expended prior to the execution of a memorandum of understanding pursuant to subdivision (b) of Section 11454.2. The consultation activities to be undertaken by the Department of Food and Agriculture are limited solely to those specifically authorized in the memorandum of understanding executed pursuant to Section 11454.2. These funds may not be expended for scientific risk

assessment activities. The department shall be reimbursed from the Department of Food and Agriculture Fund for revenue collection activities.

(c) 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. 22. Section 12842 of the Food and Agricultural Code is repealed.

SEC. 23. Section 12842 is added to the Food and Agricultural Code, to read:

12842. Every person who sells for use in this state any pesticide products that have been registered by the director shall maintain in this state, or with the director's permission at another location, an accurate record of all transactions subject to assessment for four years. The records are subject to audit by the director and shall clearly demonstrate proof of payment of all applicable assessments for each registered pesticide product sold for use in this state.

SEC. 24. Section 12843 of the Food and Agricultural Code is amended to read:

12843. The payments required by this article, together with a return in a form prescribed by the director, shall be made quarterly one calendar month after March 31, June 30, September 30, and December 31 of each year. For any delinquency in making a return, or any deficiency in payment, the director shall add to the delinquent payment a penalty of 10 percent of the amount that is due.

SEC. 25. Section 12844 of the Food and Agricultural Code is repealed.

SEC. 26. Section 12844 is added to the Food and Agricultural Code, to read:

12844. The director and the county agricultural commissioners shall jointly develop regulations specifying the criteria to be used in allocating pesticide mill assessment funds to the counties based upon each county's pest control activities, costs, workload, and performance. After providing public notice, the director shall adopt those regulations. The criteria to be used in allocating the funds to counties shall include, but not be limited to, all of the following:

(a) The effectiveness of the pesticide use enforcement program in each county.

(b) The number, comprehensiveness, and effectiveness of pest control inspections performed in each county.

(c) The number of licensed pest control dealers located in each county. The number of licensed agricultural pest control advisers, pest control businesses, and pest control aircraft pilots registered in each county. The number of structural pest control operators providing notice of work to each county.

(d) The work hours expended in each county by county personnel who are licensed, or working under the supervision of county

personnel licensed, in pesticide regulation or environmental monitoring and investigation.

(e) The total amount of dollars expended by each county relating to pesticide regulatory activities.

(f) The total number of private applicator certificate holders in each county.

(g) The total pounds of pesticides reported used in each county.

SEC. 27. Section 12845 of the Food and Agricultural Code is amended to read:

12845. (a) The director may adopt regulations that require persons subject to this article to provide information determined by the director to be necessary to enable the director to perform the audit authorized pursuant to Section 12842 and to carry out other powers or duties under this division.

(b) The regulations adopted pursuant to this section may include, but are not limited to, a requirement that a person subject to this article provide the director with information on the quarterly dollar sales of each registered pesticide sold for use in this state and the quarterly volume of each registered pesticide sold for use in this state.

SEC. 28. Section 12846 of the Food and Agricultural Code is amended to read:

12846. The Food Safety Account is hereby created in the Department of Pesticide Regulation Fund. The funds in the account shall be used, upon appropriation, for the purposes of Sections 12535, 12797, 12798, 12979, 13134 and 13135 of this code and Section 110495 of the Health and Safety Code.

SEC. 29. Section 12847 of the Food and Agricultural Code is repealed.

SEC. 30. Section 12847 is added to the Food and Agricultural Code, to read:

12847. Sales invoices for pesticides first sold into or within this state by a registrant, pesticide broker, pest control dealer, or other person subject to this article shall show that the assessment specified in Sections 12841 and 12841.1 will be paid by the registrant, broker, dealer, or person, respectively. All other sales invoices for pesticides sold into or within this state, except retail sales of those nonagricultural pesticides labeled only for home, industrial, or institutional use shall show as a comment on the invoice that the assessment will be paid, and may show an amount or rate that represents the assessment. However, only the person who actually will pay the assessment may show the amount or rate of the assessment as a line item on the sales invoice.

SEC. 31. Article 4.6 (commencing with Section 12848) of Chapter 2 of Division 7 of the Food and Agricultural Code is repealed.

SEC. 32. Section 12931 of the Food and Agricultural Code is amended to read:

12931. The director may take samples of pesticides, make analyses or examinations of them, and make such investigations as are necessary for the full enforcement of this chapter.

SEC. 33. Section 12932 of the Food and Agricultural Code is repealed.

SEC. 34. Section 12971.5 of the Food and Agricultural Code is repealed.

SEC. 35. Section 12991 of the Food and Agricultural Code is amended to read:

12991. It is unlawful for any person, individually or through another, in connection with any substance or mixture of substances included within the scope of this chapter, to do any of the following:

(a) Make any material or substantial misrepresentation.

(b) Make any false promises of a character likely to influence, induce, or deceive.

(c) Engage in illegitimate business or dishonest dealing.

(d) Cause to be published or distributed any false or misleading literature, or cause to be displayed any false or misleading advertisement.

(e) Use, store, transport, handle, or dispose of any pesticide, or of any container that holds or has held a pesticide, except in compliance with regulations of the director.

(f) Purchase for use in this state a pesticide that is labeled for agricultural use except from a person licensed as a pest control dealer pursuant to Section 12107. Persons using those products shall retain receipts of the purchase of the products for four years and make the receipts available for inspection upon request of the director or the commissioner.

SEC. 36. Section 12999.4 of the Food and Agricultural Code is amended to read:

12999.4. (a) In lieu of civil prosecution by the director, the director may levy a civil penalty against a person violating Sections 12115, 12116, 12671, 12992, 12993, Chapter 10 (commencing with Section 12400) of Division 6, or Article 4.5 (commencing with Section 12841) of not more than five thousand dollars ($5,000) for each violation.

(b) Before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation and shall be given an opportunity to be heard, including the right to review the director's evidence and a right to present evidence on his or her own behalf.

(c) Review of the decision of the director may be sought by the person against whom the penalty was levied 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 review procedure provided in this section, the director, or his or her representative, may file a certified copy of a final decision of the director that directs the payment of a

civil penalty and, if applicable, 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) Any money recovered under this section shall be paid into the Department of Pesticide Regulation Fund for use by the department, upon appropriation, in administering this division and Division 6 (commencing with Section 11401).

SEC. 37. Section 14152 of the Food and Agricultural Code is amended to read:

14152. An application for a qualified applicator certificate shall be in a form prescribed by the director. Each application shall state the name and address of the applicant specified on the application and any other information required by the director. The application shall be accompanied by a fee of twenty-five dollars ($25). All certificates issued under this chapter shall expire on December 31 of the year for which they are issued. Certificates may be renewed annually by the date of expiration by application in the form prescribed by the director and upon payment of fifteen dollars ($15). A penalty of ten dollars ($10) shall be assessed against any applicant who applies for renewal after the expiration date. These funds shall be deposited in the State Treasury to the credit of the Department of Pesticide Regulation Fund.

SEC. 38. 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 696

An act to amend Sections 226, 55403, 55435.5, 55483, 55485, 55523, 55525, 55721, 55722, 55741, 55742, 55743, 55744, 55861, 56109, 56133.5, 56161, 56186, 56273.1, 56381, 56382, and 56571 of, to amend and renumber Sections 55751, 56252, and 56451 of, to amend and repeal Sections 55861.7 and 56571.7 of, to add Sections 55462, 55484.5,

55484.75, 55485.5, 55485.75, 55524.5, 55524.75, 55525.75, 55722.5, 56134.5, 56134.75, 56183.5, 56185.5, 56185.75, 56186.5, 56186.75, 56382.5, 56701.5, and 56717 to, to repeal Sections 55486, 55487, 55489, 55490, 55526, 55527, 55528.5, 55529, 55529.5, 55745, 55745.5, 55746, 55747, 55748, 55749, 55750, 56187, 56188, 56191, 56191.5, 56192, 56192.5, 56446, 56448, 56449, 56450, and 56452 of, to repeal Article 13 (commencing with Section 55781) and Article 15 (commencing with Section 55841) of Chapter 6 of, and Article 14 (commencing with Section 56471) and Article 16 (commencing with Section 56531) of Chapter 7 of, and Chapter 7.5 (commencing with Section 56701) of, Division 20 of, and to repeal and add Sections 55484, 55488, 55524, 55528, 56185, 56190, 56443, 56444, 56445, and 56447 of, the Food and Agricultural Code, relating to agriculture, and making an appropriation therefor.

[Approved by Governor October 4, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 226 of the Food and Agricultural Code is amended to read:

226. (a) Notwithstanding Section 11044 of the Government Code, the sum of one hundred thousand dollars ($100,000) is hereby continuously appropriated from the Department of Food and Agriculture Fund in each fiscal year to the department for litigation expenses incurred by the Bureau of Market Enforcement.

(b) At any time in a given fiscal year that the one hundred thousand dollars ($100,000) appropriated for litigation costs in subdivision (a) is completely expended, the Department of Food and Agriculture Fund and the General Fund shall share additional litigation costs on a basis of 20 percent paid by the Department of Food and Agriculture Fund and 80 percent paid by the General Fund. These additional funds are to be used only when the bureau or the department is a defendant, or becomes a cross-defendant, in an action relating to market enforcement.

(c) If a legal action is carried from one fiscal year to the next, the costs incurred in the following year shall not be charged against the one hundred thousand dollars ($100,000) annually allocated pursuant to subdivision (a) to the bureau, but instead shall continue to be funded in the following years with 80 percent being paid by the General Fund and 20 percent being paid by the Department of Food and Agriculture Fund.

(d) In civil actions in which the bureau is a party, the prevailing party may be awarded court costs and attorneys fees.

SEC. 2. Section 55403 of the Food and Agricultural Code is amended to read:

55403. "Farm product" includes every agricultural, horticultural, viticultural, or vegetable product of the soil, honey and beeswax,

oilseeds, poultry, poultry product, livestock product, and livestock for immediate slaughter. It does not include timber or any timber product, milk or any milk product, any aquacultural product, or cattle sold to any person who is bonded under the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.).

SEC. 2.5. Section 55435.5 of the Food and Agricultural Code is amended to read:

55435.5. (a) Except pursuant to an exemption granted by the department, no person licensed under this chapter shall employ as an agent any person who meets any of the following criteria:

(1) Whose license has been revoked, or is currently suspended.

(2) Who has committed any one flagrant or repeated violations of this chapter or Chapter 7 (commencing with Section 56101).

(3) Who failed to pay a producer's claims for which the person, or, where the person controlled the decision to pay, the person's employer, was liable, and which arose out of the conduct of a business licensed, or required to be licensed, under this chapter or Chapter 7 (commencing with Section 56101).

(4) Who has been convicted of a crime that includes as one of its elements the financial victimization of another person.

(b) The department may approve the employment of any person covered under subdivision (a), if the licensee furnishes and maintains a surety bond in the form and amount satisfactory to the department, but which shall not be less than ten thousand dollars ($10,000), as assurance that the licensee's business will be conducted in accordance with this chapter and that the licensee will pay all amounts due California producers. The department may approve employment without a surety bond after the expiration of four years from the effective date of the applicable disciplinary order. The department, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the bond, but in no case shall the bond be reduced below ten thousand dollars ($10,000). A licensee who is notified by the department to provide a bond in an increased amount shall do so within a reasonable time to be specified by the department, and if the licensee fails to do so, the approval of employment shall automatically terminate. The department may suspend or revoke the license of any licensee who, after the date given in the notice, continues to employ any person in violation of this section.

(c) The department may obtain access to a licensee's or agent's criminal record during the course of a licensing investigation opened for other reasons or if the department is presented with a reasonable basis to believe an agent or licensee satisfies any of the criteria set forth in paragraphs (1) to (4), inclusive, of subdivision (a). The Department of Justice shall furnish criminal record information to the department at the department's request. If the information thereby obtained reveals a conviction for a crime that includes as one

of its elements the financial victimization of another person, the department shall bring this to the attention of the licensee and the agent by a written notice. This written notice shall set out the charges against the licensee or agent, prohibit employment or revoke or deny the license effective if and when any rights to an administrative hearing have been exhausted, and set out the licensee's or agent's rights under this section.

(d) The department may grant an exemption on presentation of substantial, clear, and convincing evidence to support a reasonable belief as to any of the following:

(1) There has been a mistake of fact or identity.

(2) The present role as an agent provides no opportunity for a repeat of the prior behavior.

(3) The person has been rehabilitated.

All submissions shall be authenticated and verified under penalty of perjury. Unless the licensee or agent can prove one of these three elements by substantial, clear, and convincing evidence, the department shall deny the request for exemption.

(e) (1) A licensee or agent who has been identified by the department as satisfying any of the criteria set forth in paragraphs (1) to (4), inclusive, of subdivision (a) and who has not been granted an exemption by the department shall be afforded a hearing upon the licensee's or agent's request under this chapter. The licensee or agent shall not have a right of hearing if the department did not notify the employer or deny an exemption.

(2) At the hearing, the department shall have the burden to prove that any of the criteria set forth in paragraphs (1) to (4), inclusive, of subdivision (a) are satisfied by a preponderance of the evidence. It shall be the licensee's or agent's burden to prove rehabilitation by substantial, clear, and convincing evidence.

(3) In the case of a criminal conviction, "convicted of a crime" includes a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction.

(4) For purposes of this section or any other provision of this chapter, a certified copy of a decision and order or minutes of the court in which a finding is made concerning any of the criteria set

forth in paragraphs (1) to (3), inclusive, of subdivision (a), is prima facie evidence of the truth of the charge and collateral estoppel applies.

(f) The documents and information procured pursuant to this section shall be considered the records of a consumer and shall not be construed to be a public record. The documents and information shall remain confidential, except in actions brought by the department to enforce this division, or as a result of the issuance of a subpoena in accordance with Section 1985.4 of the Code of Civil Procedure. The unauthorized release of the documents received from the Department of Justice or the information contained in those documents is a misdemeanor.

SEC. 3. Section 55462 is added to the Food and Agricultural Code, to read:

55462. For the purposes of trading in cattle, this chapter does not apply to or include any person who is bonded under the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.) who is engaged in the business of buying or selling cattle.

SEC. 3.5. Section 55483 of the Food and Agricultural Code is amended to read:

55483. (a) Each application shall include all of the following:

(1) Such information as the department may consider proper or necessary.

(2) The name and address of the applicant.

(3) The name and address of the processor that is represented or sought to be represented by the agent.

(4) The written endorsement or nomination of the processor.

(5) A release authorizing the department, during consideration of the application and for the duration of licensure, to have access to and obtain financial information from both of the following:

(A) The applicant's files with credit reporting agencies.

(B) The applicant's files with banks, savings and loan associations, or any other financial institutions with whom the applicant has done business in the past or with whom the applicant intends to do business during the year of licensure.

(6) A notice signed by the applicant that the department may obtain criminal record information during the course of a licensing investigation or upon presentation with a reasonable basis to believe the licensee has been convicted of a crime. An applicant whose application is incomplete shall be given written notice that a failure to complete it within 30 calendar days shall result in denial of the application.

(b) The documents and information procured pursuant to this section shall be considered the records of a consumer and shall not be construed to be a public record. The documents and information shall remain confidential, except in actions brought by the department to enforce this division, or as a result of the issuance of a subpoena in accordance with Section 1985.4 of the Code of Civil

Procedure. The unauthorized release of the documents received from the Department of Justice or the information contained in those documents is a misdemeanor.

(c) The department shall adopt regulations that specify the proper and necessary information and supporting documentation the department requires for an application to be considered complete.

SEC. 4. Section 55484 of the Food and Agricultural Code is repealed.

SEC. 5. Section 55484 is added to the Food and Agricultural Code, to read:

55484. The department shall accept or deny an application within 90 calendar days of receipt of a completed application. The department may deny, condition, suspend, or revoke a license issued pursuant to this chapter upon any of the following grounds and in the manner provided in this chapter:

(a) Upon one flagrant violation, as determined by the department, or upon repeated violations, by the holder or applicant, of any one or combination of the sections of this division or under any one or combination of the regulations promulgated by the department under the authority of this division.

(b) Upon one flagrant violation, as determined by the department, or upon repeated violations, by a holder's or applicant's agent, employee, or contractor, or of an organization or entity in which the holder or applicant holds a significant financial interest, of any one or combination of the sections of this division or any one or combination of the regulations promulgated under this division under circumstances where the holder or applicant knew or should have known and failed to take reasonable measures to prevent the violation or failed to report the violation to the department upon learning of the violation.

(c) On the conviction of the holder or applicant of a crime that includes as one of its elements the financial victimization of another person. However, if the licensee was licensed prior to January 1, 1998, and the department knew of, or was on notice of, the conviction, that conviction may not form the basis of a discipline under this subdivision.

(d) On the grounds of a false or misleading statement by a holder or applicant that the holder or applicant knew or should have known to be false or misleading, directed to any official of any government concerning the scope of any indicia of authority, including, but not limited to, the holder's or applicant's license associated with the holder's or applicant's business, the standards under which the indicia was authorized, the contents of the application for licensure, or the holder's or applicant's relationship to the indicia.

(e) On the grounds that a holder or applicant, or a holder's or applicant's agency, employee, or contractor, or an organization or entity in which a holder or applicant holds a significant financial

interest, deceived a grower in any material matter. Deception, for purposes of this subdivision, does not require scienter, but requires active misrepresentation where the actor knew the representation to be false or where the actor should have known, with due consideration, that he or she did not know whether or not the representation was true or false.

SEC. 6. Section 55484.5 is added to the Food and Agricultural Code, to read:

55484.5. (a) The Legislature finds there to be a substantial nexus between the conduct specified in Section 55484 and an applicant's or holder's fitness for licensure.

(b) The department shall not dismiss an action where a violation, however minor, has been established. The department shall not dismiss an action because the applicant or holder establishes factors in mitigation.

(c) However, the department may impose discipline other than denial or revocation of the license. As an alternative to revocation of a license, the department may stay a revocation subject to terms for a period of probation. As an alternative to denial the department may issue a license subject to conditions. Terms of probation or terms of conditional licensure may include, but are not limited to, a requirement of restitution, payment for extra audits, immediate revocation on a new violation, or any other terms that respond to the particular violations or circumstances found.

(d) Once a finding of a violation has been made, the department may consider the following factors in assessing the appropriate level of discipline:

(1) The relative isolation or infrequency of the conduct.

(2) Whether the conduct was a part of a pattern or practice.

(3) Whether the actor had been warned before.

(4) Whether the actor considered the consequences of the conduct.

(5) Whether the actor reasonably relied on others.

(6) The severity of the consequences.

(7) The mens rea of the actor.

(8) In the case of a criminal conviction, evidence of rehabilitation.

(9) The total licensing history.

(e) The following factors shall not be considered in assessing the appropriate level of discipline:

(1) The social or economic contributions of the applicant or holder.

(2) General testimonials as to good character and worthiness to be licensed.

(3) Economic hardship on the licensee.

(4) "Mercy of the court" pleas in connection with criminal convictions, pattern or practice violations, or deception.

(5) In the case of a felony criminal conviction, the department shall not consider rehabilitation unless the convicted person has a valid certificate of rehabilitation.

SEC. 7. Section 55484.75 is added to the Food and Agricultural Code, to read:

55484.75. (a) If an application for a license indicates, or the department determines during the application review process, that the applicant was issued a license that was revoked within the preceding two years, the department shall cease any further review of the application until two years have elapsed from the date of the revocation. The cessation of review shall not constitute a denial of the application for the purposes of this chapter, or any other provision of law.

(b) If an application for a license indicates, or the department determines during the application review process, that the applicant had previously applied for a license and the application was denied within the last year, the department shall cease further review of the application until one year has elapsed from the date of the notification of the denial or from the effective date of the decision and order of the department upholding a denial. The cessation of review shall not constitute a denial of the new applicant for purposes of this chapter, or any other provision of law.

(c) Nothing in subdivision (a) or (b) prohibits the department from taking into account the basis for denial or revocation in considering any new application subsequent to the elapse of the applicable period of prohibition.

SEC. 8. Section 55485 of the Food and Agricultural Code is amended to read:

55485. The applicant shall satisfy the department of the applicant's character, responsibility, and good faith in seeking to carry on the business that is stated in the application.

SEC. 9. Section 55485.5 is added to the Food and Agricultural Code, to read:

55485.5. A license is forfeited by operation of law prior to its expiration date when one of the following occurs:

(a) The holder surrenders the license to the department.

(b) The holder dies.

(c) The partnership holder dissolves.

(d) The holder of a significant financial interest in a corporation transfers his or her interest to another person or entity, regardless of relationship.

(e) The holder files for bankruptcy under provisions other than those permitting and governing reorganization under bankruptcy.

SEC. 10. Section 55485.75 is added to the Food and Agricultural Code, to read:

55485.75. (a) The withdrawal of an application for a license after it has been filed with the department does not deprive the department of its authority to institute or continue a proceeding

against the applicant or to enter an order denying the license, unless the department consents in writing to such a withdrawal.

(b) The expiration or forfeiture by operation of law of a license, or its forfeiture or cancellation by order of the department or by order of a court of law, or its surrender without the written consent of the department, does not deprive the department of its authority to institute or continue a disciplinary proceeding against the holder upon any ground provided by law or to enter an order revoking the license or otherwise taking disciplinary action against the holder.

(c) Any action brought by the department against an applicant or holder does not abate by reason of the sale or other transfer of ownership of the business that is a party to the action, except with the written consent of the department.

(d) Nothing in this division or in any other provision of this code deprives the department of the authority to settle or adjudicate a disposition of a case other than by revocation or denial. The department or the department's designee may compromise with the applicant or holder in a written stipulation and order. The department may, following a hearing, order probation on terms and conditions as determined by the department. The authority conferred by this subdivision shall include, but not be limited to, the authority to order payment of amounts determined owing, the authority to dismiss an action on the department's own initiative, the authority to order administrative penalties, the authority to order a respondent to pay for heightened audit scrutiny, the authority to suspend a license for a period of years, or any combination of remedies other than final revocation or denial of a license.

SEC. 11. Section 55486 of the Food and Agricultural Code is repealed.

SEC. 12. Section 55487 of the Food and Agricultural Code is repealed.

SEC. 13. Section 55488 of the Food and Agricultural Code is repealed.

SEC. 14. Section 55488 is added to the Food and Agricultural Code, to read:

55488. (a) The department shall notify the applicant or holder in writing of the department's decision to bring charges to deny or revoke a license.

(1) The notice shall inform the applicant or holder of the charges against him or her, of the department's proposed disciplinary action, and of his or her rights under this chapter.

(2) The notice shall be served by certified mail to the applicant's or holder's last known address.

(3) The notice shall be mailed to the applicant or holder at least 30 calendar days in advance of the impending action.

(b) The department's proposed action shall become final unless the applicant or holder appeals prior to the end of the notice period by submitting a notice of defense to the department in a form

specified by the department. The notice shall be transmitted to the department in a form that is written, including, but not limited to, by facsimile.

(c) If the department receives a timely notice of defense, the department shall schedule a hearing within 90 calendar days of receipt of the notice of defense. Pending the final decision at the conclusion of the hearing, a revocation shall be stayed.

(d) Proceedings for the revocation or denial of a license issued under this chapter shall be conducted by hearing officers appointed for that purpose by the department. The department may elect to use hearing officers employed by the Office of Administrative Hearings. The hearing officers shall be independent of the Market Enforcement Bureau, but may be employees of the department. The hearing officers shall be qualified administrative law judges.

(e) Proceedings shall be conducted generally in accordance with the provisions of Chapters 4.5 (commencing with Section 11400) and 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. However, proceedings need not conform strictly to any "rules of court" adopted as regulations by the Office of Administrative Hearings to guide the conduct of hearings conducted by the Office of Administrative Hearings. The department has all power granted by Chapters 4.5 (commencing with Section 11400) and 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(1) The sole parties to the proceedings shall be the department and the applicant or holder. 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 if the hearing officer requests written briefs.

(2) The validity of a department regulation or order shall not be within jurisdiction of the proceedings.

(3) Law and motion matters shall be handled by the assigned hearing officer.

(4) The hearing officer may not enter into settlement discussions.

(5) The hearing officer may not issue sanctions.

(f) In all proceedings conducted in accordance with this section, the standard of proof to be applied is the preponderance of the evidence. When the department seeks to revoke an existing license, the department shall have the burden of proof and the burden of producing evidence.

(g) Decisions following a hearing shall be adopted by the department or the department's designee and become final unless remanded for reconsideration or alternated in accordance with Chapters 4.5 (commencing with Section 11400) and 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(h) The department shall maintain a library of decisions that shall be made available to any person, including the parties to administrative actions during discovery.

SEC. 15. Section 55489 of the Food and Agricultural Code is repealed.

SEC. 16. Section 55490 of the Food and Agricultural Code is repealed.

SEC. 17. Section 55523 of the Food and Agricultural Code is amended to read:

55523. (a) Each application shall state all of the following:

(1) The full name of the applicant.

(2) If the applicant is a firm, exchange, association, or corporation, the full name of each member of the firm or the names of the officers of the exchange, association, or corporation.

(3) The principal business address of the applicant in this state.

(4) The name of every person who is authorized to receive and accept service of summons for the applicant.

(5) A release authorizing the department, during consideration of the application and for the duration of licensure, to have access to and obtain financial information from both of the following:

(A) The applicant's files with credit reporting agencies.

(B) The applicant's files with banks, savings and loan associations, or any other financial institutions with whom the applicant has done business in the past or with whom the applicant intends to do business during the year of licensure.

(6) A notice signed by the applicant that the department may obtain criminal record information during the course of a licensing investigation or upon presentation with a reasonable basis to believe the licensee has been convicted of a crime. An applicant whose application is incomplete shall be given written notice that a failure to complete the application within 30 calendar days shall result in denial of the application.

(b) The documents and information procured pursuant to this section shall be considered the records of a consumer and shall not be construed to be a public record. The documents and information shall remain confidential, except in actions brought by the department to enforce this division, or as a result of the issuance of a subpoena in accordance with Section 1985.4 of the Code of Civil Procedure. The unauthorized release of the documents received from the Department of Justice or the information contained in those documents, is a misdemeanor.

SEC. 18. Section 55524 of the Food and Agricultural Code is repealed.

SEC. 19. Section 55524 is added to the Food and Agricultural Code, to read:

55524. The department shall accept or deny an application within 90 calendar days of receipt of a completed application. The department may deny, condition, suspend, or revoke a license issued

pursuant to this chapter upon any of the following grounds and in the manner provided in this chapter:

(a) Upon one flagrant violation, as determined by the department, or repeated violations, by the holder or applicant, of any one or combination of the sections of this division or under any one or combination of the regulations promulgated by the department under the authority of this division.

(b) Upon one flagrant violation, as determined by the department, or repeated violations, by a holder's or applicant's agent, employee, or contractor, or of an organization or entity in which the holder or applicant holds a significant financial interest, of any one or combination of the sections of this division or any one or combination of the regulations promulgated under this division under circumstances where the holder or applicant knew or should have known and failed to take reasonable measures to prevent the violation or failed to report the violation to the department on learning of the violation.

(c) On the conviction of the holder or applicant of a crime that includes as one of its elements the financial victimization of another person. However, if the licensee was licensed prior to January 1, 1998, and the department knew of, or was on notice of, the conviction, that conviction may not form the basis of a discipline under this subdivision.

(d) On the grounds of a false or misleading statement by a holder or applicant that the holder or applicant knew or should have known to be false or misleading, directed to any official of any government concerning the scope of any indicia of authority, including, but not limited to, the holder's or applicant's license associated with the holder's or applicant's business, the standards under which the indicia was authorized, the contents of the application for licensure, or the holder's or applicant's relationship to the indicia.

(e) On the grounds that a holder or applicant, or a holder's or applicant's agency, employee, or contractor, or an organization or entity in which a holder or applicant holds a significant financial interest, deceived a grower in any material matter. Deception, for purposes of this subdivision, does not require scienter, but requires active misrepresentation where the actor knew the representation to be false or where the actor should have known, with due consideration, that he or she did not know whether or not the representation was true or false.

SEC. 20. Section 55524.5 is added to the Food and Agricultural Code, to read:

55524.5. (a) The Legislature finds there to be a substantial nexus between the conduct specified in Section 55524 and an applicant's or holder's fitness for licensure.

(b) The department shall not dismiss an action where a violation, however minor, has been established. The department shall not

dismiss an action because the applicant or holder establishes factors in mitigation.

(c) However, the department may impose discipline other than denial or revocation of the license. As an alternative to revocation of a license, the department may stay a revocation subject to terms for a period of probation. As an alternative to denial the department may issue a license subject to conditions. Terms of probation or terms of conditional licensure may include, but are not limited to, a requirement of restitution, payment for extra audits, immediate revocation on a new violation, or any other terms that respond to the particular violations or circumstances found.

(d) Once a finding of a violation has been made, the department may consider the following factors in assessing the appropriate level of discipline:

(1) The relative isolation or infrequency of the conduct.

(2) Whether the conduct was a part of a pattern or practice.

(3) Whether the actor had been warned before.

(4) Whether the actor considered the consequences of the conduct.

(5) Whether the actor reasonably relied on others.

(6) The severity of the consequences.

(7) The mens rea of the actor.

(8) In the case of a criminal conviction, evidence of rehabilitation.

(9) The total licensing history.

(e) The following factors shall not be considered in assessing the appropriate level of discipline:

(1) The social or economic contributions of the applicant or holder.

(2) General testimonials as to good character and worthiness to be licensed.

(3) Economic hardship on the licensee.

(4) "Mercy of the court" pleas in connection with criminal convictions, pattern or practice violations, or deception.

(5) In the case of a felony criminal conviction, the department shall not consider rehabilitation unless the convicted person has a valid certificate of rehabilitation.

SEC. 21. Section 55524.75 is added to the Food and Agricultural Code, to read:

55524.75. (a) If an application for a license indicates, or the department determines during the application review process, that the applicant was issued a license that was revoked within the preceding two years, the department shall cease any further review of the application until two years have elapsed from the date of the revocation. The cessation of review shall not constitute a denial of the application for the purposes of this chapter, or any other provision of law.

(b) If an application for a license indicates, or the department determines during the application review process, that the applicant

had previously applied for a license and the application was denied within the last year, the department shall cease further review of the application until one year has elapsed from the date of the notification of the denial or from the effective date of the decision and order of the department upholding a denial. The cessation of review shall not constitute a denial of the new applicant for purposes of this chapter, or any other provision of law.

(c) Nothing in subdivision (a) or (b) prohibits the department from taking into account the basis for denial or revocation in considering any new application subsequent to the elapse of the applicable period of prohibition.

SEC. 22. Section 55525 of the Food and Agricultural Code is amended to read:

55525. The applicant shall satisfy the department of the applicant's character, responsibility, and good faith in seeking to carry on the business that is stated in the application.

SEC. 23. Section 55525.75 is added to the Food and Agricultural Code, to read:

55525.75. (a) The withdrawal of an application for a license after it has been filed with the department does not deprive the department of its authority to institute or continue a proceeding against the applicant or to enter an order denying the license, unless the department consents in writing to such a withdrawal.

(b) The expiration or forfeiture by operation of law of a license, or its forfeiture or cancellation by order of the department or by order of a court of law, or its surrender without the written consent of the department, does not deprive the department of its authority to institute or continue a disciplinary proceeding against the holder upon any ground provided by law or to enter an order revoking the license or otherwise taking disciplinary action against the holder.

(c) Any action brought by the department against an applicant or holder does not abate by reason of the sale or other transfer of ownership of the business that is a party to the action, except with the written consent of the department.

(d) Nothing in this division or in any other provision of this code deprives the department of the authority to settle or adjudicate a disposition of a case other than by revocation or denial. The department or the department's designee may compromise with the applicant or holder in a written stipulation and order. The department may, following a hearing, order probation on terms and conditions as determined by the department. The authority conferred by this subdivision shall include, but not be limited to, the authority to order payment of amounts determined owing, the authority to dismiss an action on the department's own initiative, the authority to order administrative penalties, the authority to order a respondent to pay for heightened audit scrutiny, the authority to suspend a license for a period of years, or any combination of remedies other than final revocation or denial of a license.

SEC. 24. Section 55526 of the Food and Agricultural Code is repealed.

SEC. 25. Section 55527 of the Food and Agricultural Code is repealed.

SEC. 26. Section 55528 of the Food and Agricultural Code is repealed.

SEC. 27. Section 55528 is added to the Food and Agricultural Code, to read:

55528. (a) The department shall notify the applicant or holder in writing of the department's decision to bring charges to deny or revoke a license.

(1) The notice shall inform the applicant or holder of the charges against him or her, of the department's proposed disciplinary action, and of his or her rights under this chapter.

(2) The notice shall be served by certified mail to the applicant's or holder's last known address.

(3) The notice shall be mailed to the applicant or holder at least 30 calendar days in advance of the impending action.

(b) The department's proposed action shall become final unless the applicant or holder appeals prior to the end of the notice period by submitting a notice of defense to the department in a form specified by the department. The notice shall be transmitted to the department in a form that is written, including, but not limited to, by facsimile.

(c) If the department receives a timely notice of defense, the department shall schedule a hearing within 90 calendar days of receipt of the notice of defense. Pending the final decision at the conclusion of the hearing, a revocation shall be stayed.

(d) Proceedings for the revocation or denial of a license issued under this chapter shall be conducted by hearing officers appointed for that purpose by the department. The department may elect to use hearing officers employed by the Office of Administrative Hearings. The hearing officers shall be independent of the Market Enforcement Bureau, but may be employees of the department. The hearing officers shall be qualified administrative law judges.

(e) Proceedings shall be conducted generally in accordance with the provisions of Chapters 4.5 (commencing with Section 11400) and 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. However, proceedings need not conform strictly to any "rules of court" adopted as regulations by the Office of Administrative Hearings to guide the conduct of hearings conducted by the Office of Administrative Hearings. The department has all power granted by Chapters 4.5 (commencing with Section 11400) and 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(1) The sole parties to the proceedings shall be the department and the applicant or holder. 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 if the hearing officer requests written briefs.

(2) The validity of a department regulation or order shall not be within jurisdiction of the proceedings.

(3) Law and motion matters shall be handled by the assigned hearing officer.

(4) The hearing officer may not enter into settlement discussions.

(5) The hearing officer may not issue sanctions.

(f) In all proceedings conducted in accordance with this section, the standard of proof to be applied is the preponderance of the evidence. When the department seeks to revoke an existing license, the department shall have the burden of proof and the burden of producing evidence.

(g) Decisions following a hearing shall be adopted by the department or the department's designee and become final unless remanded for reconsideration or alternated in accordance with Chapters 4.5 (commencing with Section 11400) and 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(h) The department shall maintain a library of decisions that shall be made available to any person, including the parties to administrative actions during discovery.

SEC. 28. Section 55528.5 of the Food and Agricultural Code is repealed.

SEC. 29. Section 55529 of the Food and Agricultural Code is repealed.

SEC. 30. Section 55529.5 of the Food and Agricultural Code is repealed.

SEC. 31. Section 55721 of the Food and Agricultural Code is amended to read:

55721. (a) If, in the opinion of the department, there appears to be reasonable grounds for investigating a complaint or notification made under the provisions of this chapter, the department shall investigate the complaint or notification. In the course of the investigation, if the department determines that violations of this chapter are indicated other than alleged violations specified in the complaint or notification that served as the basis for the investigation, the department may expand the investigation to include the additional violations.

(b) In the opinion of the department, if an investigation substantiates the existence of violations of this chapter, the department may cause a complaint to be issued.

(c) The investigation may include, but shall not be construed to require, examinations and audits of the books and records of any processor that pertain to the solvency of the processor of, or to the purchase of, or to the handling and accounting for, any farm product that is purchased or received on a pack-out or other basis from the

producer of the farm product. The department may examine and audit all pertinent books, records, weight certificates, receipts, ledgers, journals, papers, contracts, bank statements, canceled checks and other documents of the processor that show or tend to show facts regarding the financial condition and the number and status of accounts of growers and others that are doing business with the processor.

SEC. 32. Section 55722 of the Food and Agricultural Code is amended to read:

55722. If the examination discloses evidence of any violation of this chapter, the department may issue a complaint detailing the charges and the discipline sought in accordance with this chapter.

SEC. 33. Section 55722.5 is added to the Food and Agricultural Code, to read:

55722.5. (a) An aggrieved grower or licensee with a complaint that is not subject to the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.) or the federal Perishable Agricultural Commodities Act, 1930 (7 U.S.C. Sec. 499a et seq.) may seek resolution of that complaint by filing a complaint with the department within nine months from the date a complete account of sales was due. The complaint shall be accompanied by two copies of all documents in the complainant's possession that are relevant to establishing the complaint, a filing fee of sixty dollars ($60), and a written denial of jurisdiction from the appropriate federal agency unless the commodity involved clearly does not fall under either the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.) or the federal Perishable Agricultural Commodities Act, 1930 (7 U.S.C. Sec. 499a et seq.). Within five business days of receipt of a signed and verified complaint, the filing fee, and the denials of federal jurisdiction, the department shall serve the verified complaint on the respondent. Service shall be by certified mail. The department, the secretary, the department's employees, the department's agents, the boards and commissions associated with the department, their employees or agents, and the State of California are not parties to the dispute in a proceeding brought under this section.

(b) The respondent served shall answer within 30 calendar days of service. The respondent's response shall include two copies of all relevant documentation of the transactions referred to in the verified complaint.

(c) Within 30 calendar days of receipt of the answer, the department shall issue to both parties a written factual summary on the basis of the documents that have been filed with the department.

(d) If a settlement is not reached within 30 calendar days after the department's summary is issued, the department, on request of the claimant or respondent and upon payment of a filing fee of three hundred dollars ($300), shall schedule alternate dispute resolution, to commence within 90 calendar days. The department shall serve

both parties with a notice of hearing, which sets out the time, date, street address, room number, telephone number, and name of the hearing officer. Service of the notice of hearing shall be by certified mail.

(e) The alternate dispute resolution shall proceed as follows:

(1) The hearing shall be conducted by hearing officers selected by and in accordance with standard procedures promulgated by the American Arbitration Association.

(2) The hearing officers shall be familiar with the type of issues presented by such claims, but need not be attorneys.

(3) The sole parties to the proceedings shall be the complainant and the respondent.

(4) The disputes, claims, and interests of the department or the State of California are not within the jurisdiction of the proceedings.

(5) The validity of a regulation of the department or order promulgated pursuant to this code is not within the jurisdiction of the proceedings.

(6) Law and motion matters shall be handled by the assigned hearing officer.

(7) The hearing officer has no authority to enter into settlement discussions except upon stipulation of the parties involved.

(8) The parties may represent themselves in propria persona or may be represented by a licensed attorney at law. A party may not be represented by a representative who is not licensed to practice law.

(9) To the extent of any conflict between any provision of Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code and this article, this article shall prevail.

(10) The hearing officer may order a review of records or an audit of records by a certified public accountant. The review or audit shall be conducted under generally accepted auditing standards of the American Institute of Certified Public Accountants, and upon completion of the review or audit the nature and extent of the review or audit shall be disclosed to the parties by the auditor in the audit report. The audit report shall disclose the number of transactions reviewed and the rationale for selecting those transactions. The department shall advance the costs of the audit or review of records, but the hearing officer shall apportion the costs at the conclusion of the hearing. The department shall pursue repayment in accordance with the hearing officer's apportionment and may bring an action in a court of competent jurisdiction to recover funds advanced. Nothing in this subdivision shall be construed to require the department to pursue any specific remedy or to prohibit the department from accepting a reasonable repayment plan.

(f) The hearing officer shall render a written decision within 60 days of submission of the case for decision. In addition to rendering a written finding as to what is owed by whom on the substantive allegations of the complaint, the hearing officer shall decide whether

or not to order the full cost of the alternative dispute resolution proceeding, and in what ratio or order the losing party is to pay the costs of the proceeding. For these purposes, the cost of the alternative dispute resolution proceeding does not include the filing fee, the parties' attorney fees, or expert witness fees. The hearing officer may also award a sanction against a complainant for filing a frivolous complaint or against a respondent for unreasonable delay tactics, bad faith bargaining, or resistance to the claim, of either 10 percent of the amount of the award or a specific amount, up to a maximum of one thousand dollars ($1,000). Any sanction award shall not be deemed to be res judicata or collateral estoppel in any subsequent case in which either the complainant or respondent are charged with filing a frivolous complaint, unreasonable delay tactics, bad faith bargaining, or resistance to the claim. The department may consider the written decision of the hearing officer in determining any related licensing action. The written decision of the hearing officer may be introduced as evidence at a court proceeding.

(g) Nothing in this section prohibits the parties to the dispute from settling their dispute prior to, during, or after the hearing.

(h) Nothing in this section alters, precludes, or conditions the exercise, during any stage of the proceedings provided by this chapter, of any other rights to relief a party may have through petition to a court of competent jurisdiction, including, but not limited to, small claims court.

SEC. 34. Section 55741 of the Food and Agricultural Code is amended to read:

55741. The department, upon its own motion, may, or upon the verified complaint of any interested party and within 30 days of the filing of that complaint, shall, commence to investigate, examine, or inspect any of the following:

(a) A transaction that involves the failure of the processor to make payment for any farm product within the time that is specified for payment in the contract of sale and purchase between the producer and the processor, in accordance with the terms of the contract or in accordance with this chapter.

(b) A transaction that involves the failure of a processor who contracts to harvest a producer's crop to fulfill the terms of the contract.

(c) A charge that a processor may be insolvent or in an unsound financial condition.

SEC. 35. Section 55742 of the Food and Agricultural Code is amended to read:

55742. Except as otherwise provided in Section 55743 or 55744, if the complaint is a bona fide dispute that involves any of the following, the department has no jurisdiction to act upon the complaint if the processor or complainant within 10 days after receiving notice of the filing of the verified complaint has notified the department of his or

her election to submit the dispute to alternative dispute resolution procedures in accordance with the provisions of a written contract:

(a) The rejection of any farm product.

(b) The failure or refusal to accept and pay for any farm product that is bought or contracted to be bought from a producer by a processor.

(c) The failure or refusal by the processor to furnish or provide boxes or other containers, or hauling, harvesting, or any other service that is contracted to be done by the processor in connection with the acceptance, harvesting, or other handling of the farm product.

(d) The terms and conditions of the written contract.

SEC. 36. Section 55743 of the Food and Agricultural Code is amended to read:

55743. The jurisdiction that is otherwise reserved to the department in this chapter, however, is restored for the purposes of this chapter if the authorities responsible for the alternative dispute resolution procedures, without reasonable cause, fail, refuse, or neglect to adjudicate the matter of dispute within 90 days from the date of the notification to the department.

SEC. 37. Section 55744 of the Food and Agricultural Code is amended to read:

55744. The department also has jurisdiction over any such complaint or dispute if the processor has failed to perform in accordance with any alternative dispute resolution procedure award that is made in accordance with the terms of the written contract.

SEC. 38. Section 55745 of the Food and Agricultural Code is repealed.

SEC. 39. Section 55745.5 of the Food and Agricultural Code is repealed.

SEC. 40. Section 55746 of the Food and Agricultural Code is repealed.

SEC. 41. Section 55747 of the Food and Agricultural Code is repealed.

SEC. 42. Section 55748 of the Food and Agricultural Code is repealed.

SEC. 43. Section 55749 of the Food and Agricultural Code is repealed.

SEC. 44. Section 55750 of the Food and Agricultural Code is repealed.

SEC. 45. Section 55751 of the Food and Agricultural Code is amended and renumbered to read:

55745. Any verified complaint filed with the department pursuant to this chapter shall be filed not later than nine months from the date a complete account of sales was due. This period, however, does not include the length of time it takes to secure a written letter of denial from the federal agencies responsible for administering the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.)

or the federal Perishable Agricultural Commodities Act, 1930 (7 U.S.C. Sec. 499a et seq.).

SEC. 46. Article 13 (commencing with Section 55781) of Chapter 6 of Division 20 of the Food and Agricultural Code is repealed.

SEC. 47. Article 15 (commencing with Section 55841) of Chapter 6 of Division 20 of the Food and Agricultural Code is repealed.

SEC. 48. Section 55861 of the Food and Agricultural Code is amended to read:

55861. (a) Except as otherwise provided in this article or in Section 56574, each applicant for a license shall pay to the department a fee in accordance with the schedule in subdivision (b), except that an agent shall pay thirty-five dollars ($35) for each license period of the principal.

(b) The amount of the fee due each year from the applicant shall be determined by the annual dollar volume of business based on the value of the farm products that is returned to the grower, as follows:

(1) For a dollar volume of less than twenty thousand dollars ($20,000), the fee shall be one hundred dollars ($100).

(2) For a dollar volume of twenty thousand dollars ($20,000) and over, but less than fifty thousand dollars ($50,000), the fee shall be four hundred dollars ($400). Effective January 1, 1999, for a dollar volume of twenty thousand dollars ($20,000) and over, but less than fifty thousand dollars ($50,000), the fee shall be three hundred dollars ($300). Effective January 1, 2000, for a dollar volume of twenty thousand dollars ($20,000) and over, but less than fifty thousand dollars ($50,000), the fee shall be two hundred dollars ($200).

(3) For a dollar volume of fifty thousand dollars ($50,000) and over, but less than two million dollars ($2,000,000), the fee shall be five hundred dollars ($500). Effective January 1, 1999, for a dollar volume of fifty thousand dollars ($50,000) and over, but less than two million dollars ($2,000,000), the fee shall be four hundred dollars ($400). Effective January 1, 2000, for a dollar volume of fifty thousand dollars ($50,000) and over, but less than two million dollars ($2,000,000), the fee shall be three hundred dollars ($300).

(4) For a dollar volume of two million dollars ($2,000,000) and over, the fee shall be six hundred dollars ($600). Effective January 1, 1999, for a dollar volume of two million dollars ($2,000,000) and over, the fee shall be five hundred dollars ($500). Effective January 1, 2000, for a dollar volume of two million dollars ($2,000,000) and over, the fee shall be four hundred dollars ($400).

(c) The department shall reevaluate the fee structure based on operating costs in fiscal years 1998–99 and 1999–2000 and, notwithstanding Section 7550.5 of the Government Code, shall report on the fee structure to the Legislature within 60 days subsequent to June 30, 2000. The report shall include, but shall not be limited to, a summary of the fees paid and services utilized by the various commodity groups covered under this chapter. The fees shall

adequately cover the costs to fully administer and operate the program in an effective and efficient manner.

SEC. 49. Section 55861.7 of the Food and Agricultural Code is amended to read:

55861.7. (a) Notwithstanding Section 55861.5, in addition to the fee paid pursuant to Section 55861, each applicant for a license shall pay a 50-percent surcharge to the Director of Pesticide Regulation, in a form and manner prescribed by the secretary.

(b) Subdivision (a) does not apply to those applicants for licenses the Department of Pesticide Regulation determines should not be assessed due to a determination of limited applicability pursuant to Sections 12535, 12536, 12797, 12798, 12979, 13134, and 13135 of this code or Section 110455 or 110485 of the Health and Safety Code to those licenses, or because substantial economic hardship would result to individual applicants.

(c) Each applicant for a license issued pursuant to this chapter who is also registered pursuant to Article 2 (commencing with Section 110460) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, may, at a date no later than the issuance of the license, submit a copy of the processed food registration certificate issued to that applicant by the State Department of Health Services pursuant to that Article 2 in lieu of the payment of the surcharge required pursuant to subdivision (a).

(d) Revenue received pursuant to this section shall be deposited in the Food Safety Account in the Department of Pesticide Regulation Fund. A penalty of 10 percent per month shall be added to any surcharge not paid when due.

(e) If the applicant is not issued a license, the department shall return the surcharge to the applicant, and for that purpose, notwithstanding Section 13340 of the Government Code, the amount of funds necessary to refund the surcharge is continuously appropriated, without regard to fiscal year, to the department.

(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.

SEC. 50. Section 56109 of the Food and Agricultural Code is amended to read:

56109. "Farm product" includes every agricultural, horticultural, viticultural, and vegetable product of the soil, poultry and poultry products, livestock products and livestock not for immediate slaughter, bees and apiary products, hay, dried beans, honey, and cut flowers. It does not, however, include any timber or timber product, flower or agricultural or vegetable seed not purchased from a producer, any milk product which is subject to the licensing and bonding provisions of Chapter 2 (commencing with Section 61801) of Part 3 of Division 21, any aquacultural product, or cattle sold to any person who is bonded under the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.).

SEC. 50.5. Section 56133.5 of the Food and Agricultural Code is amended to read:

56133.5. (a) Except pursuant to an exemption granted by the department, no person licensed under this chapter shall employ as an agent any person who meets any of the following criteria:

(1) Whose license has been revoked or is currently suspended.

(2) Who has committed any one flagrant or repeated violations of this chapter or Chapter 6 (commencing with Section 55401).

(3) Who failed to pay a producer's claims for which the person, or, where the person controlled the decision to pay, the person's employer, was liable, and which arose out of the conduct of a business licensed or required to be licensed under this chapter or Chapter 6 (commencing with Section 55401).

(4) Who has been convicted of a crime that includes as one of its elements the financial victimization of another person.

(b) The department may approve employment of any person covered by subdivision (a) if the licensee furnishes and maintains a surety bond in form and amount satisfactory to the department, but that shall not be less than ten thousand dollars ($10,000), as assurance that the licensee's business will be conducted in accordance with this chapter and that the licensee will pay all amounts due farm products creditors. The department may approve employment without a surety bond after the expiration of four years from the effective date of the applicable disciplinary order. The department, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the bond, but in no case shall the bond be reduced below ten thousand dollars ($10,000). A licensee who is notified by the department to provide a bond in an increased amount shall do so within a reasonable time to be specified by the department. If the licensee fails to do so, the approval of employment shall automatically terminate. The department may suspend or revoke the license of any licensee who, after the date given in the notice, continues to employ any person in violation of this section.

(c) The department may obtain access to a licensee's or agent's criminal record during the course of a licensing investigation opened for other reasons or if the department is presented with a reasonable basis to believe an agent or licensee satisfies any of the criteria set forth in paragraphs (1) to (4), inclusive, of subdivision (a). The Department of Justice shall furnish criminal record information to the department at the department's request. If the information thereby obtained reveals a conviction for a crime that includes as one of its elements the financial victimization of another person, the department shall bring this to the attention of the licensee and the agent by a written notice. This written notice shall set out the charges against the licensee or agent, prohibit employment or revoke or deny the license effective if and when any rights to an administrative

hearing have been exhausted, and set out the licensee's or agent's rights under this section.

(d) The department may grant an exemption on presentation of substantial, clear, and convincing evidence to support a reasonable belief as to any of the following:

(1) There has been a mistake of fact or identity.

(2) The present role as an agent provides no opportunity for a repeat of the prior behavior.

(3) The person has been rehabilitated.

All submissions shall be authenticated and verified under penalty of perjury. Unless the licensee or agent can prove one of these three elements by substantial, clear, and convincing evidence, the department shall deny the request for exemption.

(e) (1) A licensee or agent who has been identified by the department as satisfying any of the criteria set forth in paragraphs (1) to (4), inclusive, of subdivision (a) and who has not been granted an exemption by the department shall be afforded a hearing upon the licensee's or agent's request under this chapter. The licensee or agent shall not have a right of hearing if the department did not notify the employer or deny an exemption.

(2) At the hearing, the department shall have the burden to prove that any of the criteria set forth in paragraphs (1) to (4), inclusive, of subdivision (a) are satisfied by a preponderance of the evidence. It shall be the licensee's or agent's burden to prove rehabilitation by substantial, clear, and convincing evidence.

(3) In the case of a criminal conviction, "convicted of a crime" includes a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction.

(4) For purposes of this section or any other provision of this chapter, a certified copy of a decision and order or minutes of court in which a finding is made concerning any of the criteria set forth in paragraphs (1) to (3), inclusive, of subdivision (a), is prima facie evidence of the truth of the charge and collateral estoppel applies.

(f) The documents and information procured pursuant to this section shall be considered the records of a consumer and shall not be construed to be a public record. The documents and information

shall remain confidential, except in actions brought by the department to enforce this division, or as a result of the issuance of a subpoena in accordance with Section 1985.4 of the Code of Civil Procedure. The unauthorized release of the documents received from the Department of Justice or the information contained in those documents, is a misdemeanor.

SEC. 50.6. Section 56134.5 is added to the Food and Agricultural Code, to read:

56134.5. The rights, remedies, and penalties that are provided for in this chapter are in addition to any other rights, remedies, or penalties that are provided for by law, and supercede provisions of law in conflict therewith.

SEC. 50.7. Section 56134.75 is added to the Food and Agricultural Code, to read:

56134.75. Except as otherwise provided in this chapter, Part 2 (commencing with Section 307) of the Code of Civil Procedure is applicable to, and constitutes the rules of practice in, the proceedings that are mentioned in this chapter except as insofar as they are inconsistent with the provisions of this chapter.

SEC. 51. Section 56161 of the Food and Agricultural Code is amended to read:

56161. This chapter does not apply to or include any of the following:

(a) Any nonprofit cooperative association organized and operating pursuant to Chapter 1 (commencing with Section 54001), any nonprofit cooperative association organized and operating pursuant to any similar law of any other state, the District of Columbia, or the United States, or the agents of these organizations, except as to the activities of these organizations or agents which involve the handling of, or dealing in, any farm product of a nonmember of the organization.

(b) Any person or exchange that buys, receives, or otherwise handles any farm product as a processor, as defined in Section 55407.

(c) Any retail merchant who has a fixed or established place of business in this state. This exemption does not, however, apply to retail merchants who are also engaged in the business of selling, at wholesale, any farm product purchased from a licensee or producer. This exemption also does not apply to any transaction wherein possession of any farm product is obtained from a licensee or producer, and the farm product is sold to another person without being handled in the regular course of a retail business which is conducted at a fixed and established place.

(d) Any person who buys any farm product for his or her own use or consumption.

(e) Any person licensed as a distributor or handler under Chapter 2 (commencing with Section 61801) of Part 3 of Division 21 who purchases farm products from a dealer, broker, or commission

merchant. However, this chapter applies to any such licensed person who purchases farm products from a producer.

(f) Any person licensed as a landscape contractor pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

(g) Any person, not otherwise required to be licensed pursuant to this chapter, that buys or otherwise acquires possession of any farm product from, and processed by, a nonprofit cooperative association to which subdivision (a) is applicable.

(h) For the purposes of trading in cattle, any person engaged in the business of buying or selling cattle who is bonded under the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.).

SEC. 51.5. Section 56183.5 is added to the Food and Agricultural Code, to read:

56183.5. (a) An initial application, at a minimum, shall include the following:

(1) A release authorizing the department, during consideration of the application and for the duration of licensure, to have access to and obtain financial information from both of the following:

(A) The applicant's files with credit reporting agencies.

(B) The applicant's files with banks, savings and loan associations, or any other financial institutions with whom the applicant has done business in the past or with whom the applicant intends to do business during the year of licensure.

(2) A notice signed by the applicant that the department may obtain criminal record information during the course of a licensing investigation or upon presentation with a reasonable basis to believe the licensee has been convicted of a crime. An applicant whose application is incomplete shall be given written notice that a failure to complete it within 30 calendar days shall result in denial of the application.

(b) The documents and information procured pursuant to this section shall be considered the records of a consumer and shall not be construed to be a public record. The documents and information shall remain confidential, except in actions brought by the department to enforce this division, or as a result of the issuance of a subpoena in accordance with Section 1985.4 of the Code of Civil Procedure. The unauthorized release of the documents received from the Department of Justice or the information contained in those documents is a misdemeanor.

(c) The department shall adopt regulations that specify the proper and necessary information and supporting documentation the department requires for an application to be considered complete.

SEC. 52. Section 56185 of the Food and Agricultural Code is repealed.

SEC. 53. Section 56185 is added to the Food and Agricultural Code, to read:

56185. The department shall accept or deny an application within 90 calendar days of receipt of a completed application. The department may deny, condition, suspend, or revoke a license issued pursuant to this chapter upon any of the following grounds and in the manner provided in this chapter:

(a) Upon one flagrant violation, as determined by the department, or upon repeated violations, by the holder or applicant, of any one or combination of the sections of this division or under any one or combination of the regulations promulgated by the department under the authority of this division.

(b) Upon one flagrant violation, as determined by the department, or upon repeated violations, by a holder's or applicant's agent, employee, or contractor, or of an organization or entity in which the holder or applicant holds a significant financial interest, of any one or combination of the sections of this division or any one or combination of the regulations promulgated under this division under circumstances where the holder or applicant knew or should have known and failed to take reasonable measures to prevent the violation or failed to report the violation to the department upon learning of the violation.

(c) Upon the conviction of the holder or applicant of a crime that includes as one of its elements the financial victimization of another person. However, if the licensee was licensed prior to January 1, 1998, and the department knew of, or was on notice of, the conviction, that conviction may not form the basis of a disciplinary action under this subdivision.

(d) On the grounds of a false or misleading statement by a holder or applicant that the holder or applicant knew or should have known to be false or misleading, directed to any official of any government concerning the scope of any indicia of authority, including, but not limited to, the holder's or applicant's license associated with the holder's or applicant's business, the standards under which the indicia was authorized, the contents of the application for licensure, or the holder's or applicant's relationship to the indicia.

(e) On the grounds that a holder or applicant, or a holder's or applicant's agency, employee, or contractor, or an organization or entity in which a holder or applicant holds a significant financial interest, deceived a grower in any material matter. Deception, for purposes of this subdivision, does not require scienter, but requires active misrepresentation where the actor knew the representation to be false or where the actor should have known, with due consideration, that he or she did not know whether or not the representation was true or false.

SEC. 54. Section 56185.5 is added to the Food and Agricultural Code, to read:

56185.5. (a) The Legislature finds there to be a substantial nexus between the conduct specified in Section 56185 and an applicant's or holder's fitness for licensure.

(b) The department shall not dismiss an action where a violation, however minor, has been established. The department shall not dismiss an action because the applicant or holder establishes factors in mitigation.

(c) However, the department may impose discipline other than denial or revocation of the license. As an alternative to revocation of a license, the department may stay a revocation subject to terms for a period of probation. As an alternative to denial the department may issue a license subject to conditions. Terms of probation or terms of conditional licensure may include, but are not limited to, a requirement of restitution, payment for extra audits, immediate revocation on a new violation, or any other terms that respond to the particular violations or circumstances found.

(d) Once a finding of a violation has been made, the department may consider the following factors in assessing the appropriate level of discipline:

(1) The relative isolation or infrequency of the conduct.

(2) Whether the conduct was a part of a pattern or practice.

(3) Whether the actor had been warned before.

(4) Whether the actor considered the consequences of the conduct.

(5) Whether the actor reasonably relied on others.

(6) The severity of the consequences.

(7) The mens rea of the actor.

(8) In the case of a criminal conviction, evidence of rehabilitation.

(9) The total licensing history.

(e) The following factors shall not be considered in assessing the appropriate level of discipline:

(1) The social or economic contributions of the applicant or holder.

(2) General testimonials as to good character and worthiness to be licensed.

(3) Economic hardship on the licensee.

(4) "Mercy of the court" pleas in connection with criminal convictions, pattern or practice violations, or deception.

(5) In the case of a felony criminal conviction, the department shall not consider rehabilitation unless the convicted person has a valid certificate of rehabilitation.

SEC. 55. Section 56185.75 is added to the Food and Agricultural Code, to read:

56185.75. (a) If an application for a license indicates, or the department determines during the application review process, that the applicant was issued a license that was revoked within the preceding two years, the department shall cease any further review of the application until two years have elapsed from the date of the revocation. The cessation of review shall not constitute a denial of the application for the purposes of this chapter, or any other provision of law.

(b) If an application for a license indicates, or the department determines during the application review process, that the applicant had previously applied for a license and the application was denied within the last year, the department shall cease further review of the application until one year has elapsed from the date of the notification of the denial or from the effective date of the decision and order of the department upholding a denial. The cessation of review shall not constitute a denial of the new applicant for purposes of this chapter, or any other provision of law.

(c) Nothing in subdivision (a) or (b) prohibits the department from taking into account the basis for denial or revocation in considering any new application subsequent to the elapse of the applicable period of prohibition.

SEC. 56. Section 56186 of the Food and Agricultural Code is amended to read:

56186. The department shall require the applicant to make a showing of character, responsibility, and good faith in seeking to carry on the business that is stated in the application, and may make investigations, hold hearings, and make determinations respecting such matters.

SEC. 57. Section 56186.5 is added to the Food and Agricultural Code, to read:

56186.5. A license is forfeited by operation of law prior to its expiration date when one of the following occurs:

(a) The holder surrenders the license to the department.

(b) The holder dies.

(c) The partnership holder dissolves.

(d) The holder of a significant financial interest in a corporation transfers his or her interest to another person or entity, regardless of relationship.

(e) The holder files for bankruptcy under provisions other than those permitting and governing reorganization under bankruptcy.

SEC. 58. Section 56186.75 is added to the Food and Agricultural Code, to read:

56186.75. (a) The withdrawal of an application for a license after it has been filed with the department does not deprive the department of its authority to institute or continue a proceeding against the applicant or to enter an order denying the license, unless the department consents in writing to such a withdrawal.

(b) The expiration or forfeiture by operation of law of a license, or its forfeiture or cancellation by order of the department or by order of a court of law, or its surrender without the written consent of the department, does not deprive the department of its authority to institute or continue a disciplinary proceeding against the holder upon any ground provided by law or to enter an order revoking the license or otherwise taking disciplinary action against the holder.

(c) Any action brought by the department against an applicant or holder does not abate by reason of the sale or other transfer of

ownership of the business that is a party to the action, except with the written consent of the department.

(d) Nothing in this division or in any other provision of this code deprives the department of the authority to settle or adjudicate a disposition of a case other than by revocation or denial. The department or the department's designee may compromise with the applicant or holder in a written stipulation and order. The department may, following a hearing, order probation on terms and conditions as determined by the department. The authority conferred by this subdivision shall include, but not be limited to, the authority to order payment of amounts determined owing, the authority to dismiss an action on the department's own initiative, the authority to order administrative penalties, the authority to order a respondent to pay for heightened audit scrutiny, the authority to suspend a license for a period of years, or any combination of remedies other than final revocation or denial of a license.

SEC. 59. Section 56187 of the Food and Agricultural Code is repealed.

SEC. 60. Section 56188 of the Food and Agricultural Code is repealed.

SEC. 61. Section 56190 of the Food and Agricultural Code is repealed.

SEC. 62. Section 56190 is added to the Food and Agricultural Code, to read:

56190. (a) The department shall notify the applicant or holder in writing of the department's decision to bring charges to deny, suspend, or revoke a license.

(1) The notice shall inform the applicant or holder of the charges against him or her, of the department's proposed disciplinary action, and of his or her rights under this chapter.

(2) The notice shall be served by certified mail to the applicant or holder's last known address.

(3) Except where the license has been temporarily suspended, the notice shall be mailed to the applicant or holder at least 30 calendar days in advance of the impending action.

(b) The department's proposed action shall become final unless the applicant or holder appeals prior to the end of the notice period by submitting a notice of defense to the department in a form specified by the department. The notice shall be transmitted to the department in a form that is written, including, but not limited to, by facsimile.

(c) If the department receives a timely notice of defense, the department shall schedule a hearing within 90 calendar days of receipt of the notice of defense, except where the license has been temporarily suspended. Pending the final decision at the conclusion of the hearing, a revocation shall be stayed. A temporary suspension shall not be stayed.

(d) Proceedings for the revocation or denial of a license issued under this chapter shall be conducted by hearing officers appointed for that purpose by the department. The department may elect to use hearing officers employed by the Office of Administrative Hearings. The hearing officers shall be independent of the Market Enforcement Bureau, but may be employees of the department. The hearing officers shall be qualified administrative law judges.

(e) Proceedings shall be conducted generally in accordance with the provisions of Chapters 4.5 (commencing with Section 11400) and 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. However, proceedings need not conform strictly to any "rules of court" adopted as regulations by the Office of Administrative Hearings to guide the conduct of hearings conducted by the Office of Administrative Hearings. The department has all power granted by Chapters 4.5 (commencing with Section 11400) and 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(1) The sole parties to the proceedings shall be the department and the applicant or holder. 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 if the hearing officer requests written briefs.

(2) The validity of a department regulation or order shall not be within jurisdiction of the proceedings.

(3) Law and motion matters shall be handled by the assigned hearing officer.

(4) The hearing officer may not enter into settlement discussions.

(5) The hearing officer may not issue sanctions.

(f) In all proceedings conducted in accordance with this section, the standard of proof to be applied is the preponderance of the evidence. When the department seeks to revoke an existing license, the department shall have the burden of proof and the burden of producing evidence.

(g) Decisions following a hearing shall be adopted by the department or the department's designee and become final unless remanded for reconsideration or alternated in accordance with Chapters 4.5 (commencing with Section 11400) and 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(h) The department shall maintain a library of decisions that shall be made available to any person, including the parties to administrative actions during discovery.

SEC. 63. Section 56191 of the Food and Agricultural Code is repealed.

SEC. 64. Section 56191.5 of the Food and Agricultural Code is repealed.

SEC. 65. Section 56192 of the Food and Agricultural Code is repealed.

SEC. 66. Section 56192.5 of the Food and Agricultural Code is repealed.

SEC. 67. Section 56252 of the Food and Agricultural Code is amended and renumbered to read:

56189. In addition to the other requirements of this chapter, each application for a license, except for a cash buyer's license, shall include an affidavit in which the applicant affirms that he or she is current in making all payments required under undisputed contract agreements, and that he or she will do all of the following:

(a) Abide by all provisions of this chapter and Chapter 6 (commencing with Section 55401).

(b) Will prepare and retain financial records adequate to document all transactions with suppliers.

(c) Will prepare and retain current financial information, including, but not limited to, profit-and-loss statements and a balance sheet that presents fairly the financial condition as of the applicant's most recent yearend.

The affidavit shall be on a form prescribed by the secretary and shall be submitted under penalty of perjury.

SEC. 67.5. Section 56273.1 of the Food and Agricultural Code is amended to read:

56273.1. (a) For purposes of this chapter, an account of sales shall be deemed complete if it consists of all of the following information:

(1) The date of shipment.

(2) The terms of the original sale concerning where and when title passes.

(3) The commodity, variety, size, and grade.

(4) The quantity shipped.

(5) The quantity disposed of in a manner other than sale by the buyer, if applicable.

(6) The original selling price.

(7) The adjusted selling price, if applicable.

(8) The reason for adjustment, if applicable.

(9) Any inspection certificate required to be obtained as stated in Section 56280.

(10) Amounts billed and collected from the buyer for services rendered to the buyer by the commission merchant.

(11) The gross and net returns received from the buyer.

(12) Any authorized commission merchant charges.

(13) Any additional amounts paid to the consignor by the commission merchant to support the original price.

(14) The net amount due the consignor.

(b) The consignor and the commission merchant may agree on the documentation necessary to support the information required by subdivision (a). The agreements shall be made, in writing, prior to the shipping season of the particular farm product.

SEC. 68. Section 56381 of the Food and Agricultural Code is amended to read:

56381. (a) If, in the opinion of the department, there appears to be reasonable grounds for investigating a complaint or notification made under the provisions of this chapter, the department shall investigate the complaint or notification. In the course of the investigation, if the department determines that violations of this chapter are indicated other than alleged violations specified in the complaint or notification that served as the basis for the investigation, the department may expand the investigation to include the additional violations.

(b) In the opinion of the department, if an investigation substantiates the existence of violations of this chapter, the department may cause a complaint to be issued.

(c) The investigation may include, but shall not be construed to require, examinations and audits of the books and records of any licensee pertaining to the solvency of the licensee, or to the purchase or handling of and accounting for any farm product purchased or received on consignment from another licensee or the producer, or handled as a brokerage transaction. The department may examine and audit all pertinent books, records, weight certificates, receipts, ledgers, journals, papers, contracts, bank statements, canceled checks, and other documents of the licensee that show or tend to show facts regarding the financial condition and the number and status of accounts of growers and others who are doing business with the licensee.

SEC. 69. Section 56382 of the Food and Agricultural Code is amended to read:

56382. If the examination discloses evidence of any violation of this chapter, the department may issue a complaint detailing the charges and the discipline sought in accordance with this chapter.

SEC. 70. Section 56382.5 is added to the Food and Agricultural Code, to read:

56382.5. (a) An aggrieved grower or licensee with a complaint that is not subject to the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.) or the federal Perishable Agricultural Commodities Act, 1930 (7 U.S.C. Sec. 499a et seq.) may seek resolution of that complaint by filing a complaint with the department within nine months from the date a complete account of sales was due. The complaint shall be accompanied by two copies of all documents in the complainant's possession that are relevant to establishing the complaint, a filing fee of sixty dollars ($60), and a written denial of jurisdiction from the appropriate federal agency unless the commodity involved clearly does not fall under the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.) or the federal Perishable Agricultural Commodities Act, 1930 (7 U.S.C. Sec. 499a et seq.). Within five business days of receipt of a signed and verified complaint, the filing fee, and the denials of federal

jurisdiction, the department shall serve the verified complaint on the respondent. Service shall be by certified mail. The department, the secretary, the department's employees, the department's agents, the boards and commissions associated with the department, their employees or agents, and the State of California are not parties to the dispute in a proceeding brought under this section.

(b) The respondent served shall answer within 30 calendar days of service. Respondent's response shall include two copies of all relevant documentation of the transactions referred to in the verified complaint.

(c) Within 30 calendar days of receipt of the answer, the department shall issue to both parties a written factual summary on the basis of the documents that have been filed with the department.

(d) If a settlement is not reached within 30 calendar days after the department's summary is issued, the department, on request of the claimant or respondent and upon payment of a filing fee of three hundred dollars ($300), shall schedule alternate dispute resolution, to commence within 90 calendar days. The department shall serve both parties with a notice of hearing, which sets out the time, date, street address, room number, telephone number, and name of the hearing officer. Service of the notice of hearing shall be by certified mail.

(e) The alternate dispute resolution shall proceed as follows:

(1) The hearing shall be conducted by hearing officers selected by and in accordance with standard procedures promulgated by the American Arbitration Association.

(2) The hearing officers shall be familiar with the type of issues presented by such claims, but need not be attorneys.

(3) The sole parties to the proceedings shall be the complainant and the respondent.

(4) The disputes, claims, and interests of the department or the State of California are not within the jurisdiction of the proceedings.

(5) The validity of a regulation of the department or order promulgated pursuant to this code is not within the jurisdiction of the proceedings.

(6) Law and motion matters shall be handled by the assigned hearing officer.

(7) The hearing officer has no authority to enter into settlement discussions except upon stipulation of the parties involved.

(8) The parties may represent themselves in propria persona or may be represented by a licensed attorney at law. A party may not be represented by a representative who is not licensed to practice law.

(9) To the extent of any conflict between any provision of Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code and this article, this article shall prevail.

(10) The hearing officer may order a review of records or an audit of records by a certified public accountant. The review or audit shall

be conducted under generally accepted auditing standards of the American Institute of Certified Public Accountants, and upon completion of the review or audit the nature and extent of the review or audit shall be disclosed to the parties by the auditor in the audit report. The audit report shall disclose the number of transactions reviewed and the rationale for selecting those transactions. The department shall advance the costs of the audit or review of records, but the hearing officer shall apportion the costs at the conclusion of the hearing. The department shall pursue repayment in accordance with the hearing officer's apportionment and may bring an action in a court of competent jurisdiction to recover funds advanced. Nothing in this subdivision shall be construed to require the department to pursue any specific remedy or to prohibit the department from accepting a reasonable repayment plan.

(f) The hearing officer shall render a written decision within 60 days of submission of the case for decision. In addition to rendering a written finding as to what is owed by whom on the substantive allegations of the complaint, the hearing officer shall decide whether or not to order the full cost of the alternative dispute resolution proceeding, and in what ratio or order the losing party is to pay the costs of the proceeding. For these purposes, the cost of the alternative dispute resolution proceeding does not include the filing fee, the parties' attorney fees, or expert witness fees. The hearing officer may also award a sanction against a complainant for filing a frivolous complaint or against a respondent for unreasonable delay tactics, bad faith bargaining, or resistance to the claim, of either 10 percent of the amount of the award or a specific amount, up to a maximum of one thousand dollars ($1,000). Any sanction award shall not be deemed to be res judicata or collateral estoppel in any subsequent case in which either the complainant or respondent are charged with filing a frivolous complaint, unreasonable delay tactics, bad faith bargaining, or resistance to the claim. The department may consider the written decision of the hearing officer in determining any related licensing action. The written decision of the hearing officer may be introduced as evidence at a court proceeding.

(g) Nothing in this section prohibits the parties to the dispute from settling their dispute prior to, during, or after the hearing.

(h) Nothing in this section alters, precludes, or conditions the exercise, during any stage of the proceedings provided by this chapter, of any other rights to relief a party may have through petition to a court of competent jurisdiction, including, but not limited to, small claims court.

SEC. 71. Section 56443 of the Food and Agricultural Code is repealed.

SEC. 72. Section 56443 is added to the Food and Agricultural Code, to read:

56443. Except as otherwise provided in Section 56444 or 56445, if the complaint is a bona fide dispute that involves any of the following,

the department has no jurisdiction to act upon the complaint if the licensee or complainant, within 10 calendar days after receiving notice of the filing of the verified complaint, has notified the department of his or her election to submit the dispute to alternative dispute procedures in accordance with the provisions of a written contract:

(a) The rejection of any farm product.

(b) The failure or refusal to accept and pay for any farm product that is bought or contracted to be bought from a producer or by a licensee.

(c) The failure or refusal by the licensee to furnish or provide boxes or other containers, or hauling, harvesting, or any other services that are contracted to be done by the licensee in connection with the acceptance, harvesting, or other handling of the farm product.

(d) The terms and conditions of the written contract.

SEC. 73. Section 56444 of the Food and Agricultural Code is repealed.

SEC. 74. Section 56444 is added to the Food and Agricultural Code, to read:

56444. The jurisdiction that is otherwise reserved to the department in this chapter is, however, restored for the purposes of this chapter if the authorities responsible for the alternative dispute procedures, without reasonable cause, fail, refuse, or neglect to adjudicate the matter in dispute within 90 days from the date of notification to the department.

SEC. 75. Section 56445 of the Food and Agricultural Code is repealed.

SEC. 76. Section 56445 is added to the Food and Agricultural Code, to read:

56445. The department also has jurisdiction over any complaint or dispute if the licensee has failed to perform in accordance with any alternative dispute procedure award that is made in accordance with the terms of the written contract.

SEC. 77. Section 56446 of the Food and Agricultural Code is repealed.

SEC. 78. Section 56447 of the Food and Agricultural Code is repealed.

SEC. 78.5. Section 56447 is added to the Food and Agricultural Code, to read:

56447. If a licensee fails to pay farm products creditors for any farm product that is received on consignment from the creditors, or fails to pay farm products creditors for any farm product purchased from the creditors, the department shall ascertain the names and addresses of all farm products creditors of that licensee together with the amounts due and owing to them by the licensee, and shall request all those farm products creditors to file a verified statement of their respective claims with the department. The request shall be

addressed to each known farm products creditor at his or her last known address.

SEC. 79. Section 56448 of the Food and Agricultural Code is repealed.

SEC. 80. Section 56449 of the Food and Agricultural Code is repealed.

SEC. 81. Section 56450 of the Food and Agricultural Code is repealed.

SEC. 82. Section 56451 of the Food and Agricultural Code is amended and renumbered to read:

56446. Any verified complaint filed with the department pursuant to this chapter shall be filed not later than nine months from the date a complete account of sales was due.

This period, however, does not include the length of time it takes to secure a written letter of denial from the federal agencies responsible for administering the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.) or the federal Perishable Agricultural Commodities Act, 1930 (7 U.S.C. Sec. 499a et seq.).

SEC. 83. Section 56452 of the Food and Agricultural Code is repealed.

SEC. 84. Article 14 (commencing with Section 56471) of Chapter 7 of Division 20 of the Food and Agricultural Code is repealed.

SEC. 85. Article 16 (commencing with Section 56531) of Chapter 7 of Division 20 of the Food and Agricultural Code is repealed.

SEC. 86. Section 56571 of the Food and Agricultural Code is amended to read:

56571. (a) Except as otherwise provided in this article or Section 55863, each applicant for a license shall pay to the department a fee in accordance with the schedule in subdivision (b), except that an agent shall pay thirty-five dollars ($35) for each license period of the principal.

(b) The amount of the fee due each year shall be determined by the annual dollar volume of business based on farm product value returned to the grower or licensee, as follows:

(1) For a dollar volume of less than twenty thousand dollars ($20,000), the fee shall be one hundred dollars ($100).

(2) For a dollar volume of twenty thousand dollars ($20,000) and over, but less than fifty thousand dollars ($50,000), the fee shall be four hundred dollars ($400). Effective January 1, 1999, for a dollar volume of twenty thousand dollars ($20,000) and over, but less than fifty thousand dollars ($50,000), the fee shall be three hundred dollars ($300). Effective January 1, 2000, for a dollar volume of twenty thousand dollars ($20,000) and over, but less than fifty thousand dollars ($50,000), the fee shall be two hundred dollars ($200).

(3) For a dollar volume of fifty thousand dollars ($50,000) and over, but less than two million dollars ($2,000,000), the fee shall be five hundred dollars ($500). Effective January 1, 1999, for a dollar volume of fifty thousand dollars ($50,000) and over, but less than two

million dollars ($2,000,000), the fee shall be four hundred dollars ($400). Effective January 1, 2000, for a dollar volume of fifty thousand dollars ($50,000) and over, but less than two million dollars ($2,000,000), the fee shall be three hundred dollars ($300).

(4) For a dollar volume of two million dollars ($2,000,000) and over, the fee shall be six hundred dollars ($600). Effective January 1, 1999, for a dollar volume of two million dollars ($2,000,000) and over, the fee shall be five hundred dollars ($500). Effective January 1, 2000, for a dollar volume of two million dollars ($2,000,000) and over, the fee shall be four hundred dollars ($400).

(c) The department shall reevaluate the fee structure based on operating costs in fiscal years 1998–99 and 1999–2000 and, notwithstanding Section 7550.5 of the Government Code, shall report on the fee structure to the Legislature within 60 days subsequent to June 30, 2000. The report shall include, but shall not be limited to, a summary of the fees paid and services utilized by the various commodity groups covered under this chapter. The fees shall adequately cover the costs to fully administer and operate the program in an effective and efficient manner.

SEC. 87. Section 56571.7 of the Food and Agricultural Code is amended to read:

56571.7. (a) Notwithstanding Section 56571.5, in addition to the fee paid pursuant to Section 56571, each applicant for a license shall pay a 50-percent surcharge to the Director of Pesticide Regulation, in a form and manner prescribed by the secretary.

(b) Subdivision (a) does not apply to those applicants for licenses the Department of Pesticide Regulation determines should not be assessed due to a determination of limited applicability pursuant to Sections 12535, 12536, 12797, 12798, 12979, 13134, and 13135 of this code or Section 110455 or 110485 of the Health and Safety Code to those licenses, or because substantial economic hardship would result to individual applicants.

(c) Revenue received pursuant to this section shall be deposited in the Food Safety Account in the Department of Pesticide Regulation Fund. A penalty of 10 percent per month shall be added to any surcharge not paid when due.

(d) If the applicant is not issued a license, the department shall return the surcharge to the applicant, and for that purpose, notwithstanding Section 13340 of the Government Code, the amount of funds necessary to refund the surcharge is continuously appropriated, without regard to fiscal year, to the department.

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

SEC. 88. Section 56701.5 is added to the Food and Agricultural Code, to read:

56701.5. (a) No further claims shall be made against the products fund subsequent to January 1, 1998, and no further assessment may be collected for deposit in the fund after January 1, 1999.

(b) The department shall continue to administer the products fund for the purpose of paying lawful charges accrued but not paid as of December 31, 1997. Upon completion of the last of these claims, the products fund shall cease to exist, and any funds remaining on deposit shall be distributed on a pro rata basis to then existing licensees.

SEC. 89. Section 56717 is added to the Food and Agricultural Code, to read:

56717. This chapter shall remain in effect only until the date upon which all of the funds remaining in the products fund have been distributed pursuant to Section 56701.5, and as of that date is repealed, unless a later enacted statute, which is enacted before that date, deletes or extends that date.

SEC. 90. 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 697

An act to add Section 19721.6 to the Revenue and Taxation Code, relating to child support.

[Approved by Governor October 5, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 19721.6 is added to the Revenue and Taxation Code, to read:

19721.6. (a) The Franchise Tax Board, through a cooperative agreement with the State Department of Social Services, and in coordination with financial institutions doing business in this state, shall operate a Financial Institution Match System utilizing automated data exchanges to the maximum extent feasible. The Financial Institution Match System shall be implemented pursuant

to guidelines prescribed by the State Department of Social Services and the Franchise Tax Board. These guidelines shall include a structure by which financial institutions, or their designated data processing agents, shall receive from the Franchise Tax Board the entire list of past-due support obligors, which the institution shall match with its own list of accountholders to identify past-due support obligor accountholders at the institution. To the extent allowed by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the guidelines shall include an option by which financial institutions without the technical ability to process the data exchange, or without the ability to employ a third-party data processor to process the data exchange, may forward to the Franchise Tax Board a list of all accountholders and their social security numbers, so that the Franchise Tax Board shall match that list with the entire list of past-due support obligors.

(b) The Financial Institution Match System shall not be subject to any limitation set forth in Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code. However, any use of the information provided pursuant to this section for any purpose other than the enforcement and collection of a child support delinquency, as set forth in Section 19271, shall be a violation of Section 19542.

(c) Each county shall compile a file of support obligors with judgments and orders that are being enforced by district attorneys pursuant to Section 11475.1 of the Welfare and Institutions Code, and who are past due in the payment of their support obligations. The file shall be compiled, updated, and forwarded to the Franchise Tax Board, in accordance with the guidelines prescribed by the State Department of Social Services and the Franchise Tax Board.

(d) To effectuate the Financial Institution Match System, financial institutions subject to this section shall do all of the following:

(1) Provide to the Franchise Tax Board on a quarterly basis the name, record address and other addresses, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at the institution and who owes past-due support, as identified by the Franchise Tax Board by name and social security number or other taxpayer identification number.

(2) In response to a notice or order to withhold issued by the Franchise Tax Board, withhold from any accounts of the obligor the amount of any past-due support stated on the notice or order and transmit the amount to the Franchise Tax Board in accordance with Section 18670 or 18670.5.

(e) Unless otherwise required by applicable law, a financial institution furnishing a report or providing information to the Franchise Tax Board pursuant to this section shall not disclose to a depositor or an accountholder, or a codepositor or coaccountholder,

that the name, address, social security number, or other taxpayer identification number or other identifying information of that person has been received from or furnished to the Franchise Tax Board.

(f) A financial institution shall incur no obligation or liability to any person arising from any of the following:

(1) Furnishing information to the Franchise Tax Board as required by this section.

(2) Failing to disclose to a depositor or accountholder that the name, address, social security number, or other taxpayer identification number or other identifying information of that person was included in the data exchange with the Franchise Tax Board required by this section.

(3) Withholding or transmitting any assets in response to a notice or order to withhold issued by the Franchise Tax Board as a result of the data exchange. This paragraph shall not preclude any liability that may result if the financial institution does not comply with subdivision (b) of Section 18674.

(4) Any other action taken in good faith to comply with the requirements of this section.

(g) Information required to be submitted to the Franchise Tax Board pursuant to this section shall only be used by the Franchise Tax Board to collect past-due support pursuant to Section 19271. If the Franchise Tax Board has issued an earnings withholding order and the condition described in subparagraph (C) of paragraph (1) of subdivision (i) exists with respect to the obligor, the Franchise Tax Board shall not use the information it receives under this section to collect the past-due support from that obligor. The Franchise Tax Board shall forward to the counties, in accordance with guidelines prescribed by the State Department of Social Services and the Franchise Tax Board, information obtained from the financial institutions pursuant to this section. No county shall use this information for directly levying on any account. Each county shall keep the information confidential as provided by Section 11478.1 of the Welfare and Institutions Code.

(h) For those noncustodial parents owing past-due support for which there is a match under paragraph (1) of subdivision (d), the past-due support at the time of the match shall be a delinquency under this article for the purposes of the Franchise Tax Board taking any collection action pursuant to Section 18670 or 18670.5.

(i) (1) Each county shall notify the Franchise Tax Board upon the occurrence of the circumstances described in the following subparagraphs with respect to an obligor of past-due support:

(A) All of the following apply:

(i) A court has ordered an obligor to make scheduled payments on a child support arrearages obligation.

(ii) The obligor is in compliance with that order.

(B) An earnings assignment order or a notice of assignment that includes an amount for past-due support has been served on the

obligated parent's employer and earnings are being withheld pursuant to the earnings assignment order or a notice of assignment.

(C) At least 50 percent of the obligated parent's earnings are being withheld for support.

(D) The obligor is less than 90 days delinquent in the payment of any amount of support. For purposes of this subparagraph, any delinquency existing at the time a case is received by a district attorney shall not be considered until 90 days have passed.

(E) A child support delinquency need not be referred to the Franchise Tax Board for collection if a jurisdiction outside this state is enforcing the support order.

(2) Upon notification, the Franchise Tax Board shall not use the information it receives under this section to collect any past-due support from that obligor.

(j) Notwithstanding subdivision (i), the Franchise Tax Board may use the information it receives under this section to collect any past-due support at any time if a county requests action be taken.

(k) The Franchise Tax Board may not use the information it receives under this section to collect any past-due support if a county has applied for and received an exemption from the State Department of Social Services as provided by subdivision (k) of Section 19271, unless that county specifically requests collection against that obligor. The Franchise Tax Board may not use the information it receives under this section to collect any past-due support if a county requests that action not be taken.

(*l*) For purposes of this section:

(1) "Account" means any demand deposit account, share or share draft account, checking or negotiable withdrawal order account, savings account, time deposit account, or a money market mutual fund account, whether or not the account bears interest.

(2) "Financial institution" has the same meaning as defined in Section 669A(d)(1) of Title 42 of the United States Code.

(3) "Past-due support" means any child support obligation that is unpaid on the due date for payment.

(m) Out of any money received from the federal government for the purpose of reimbursing financial institutions for their actual and reasonable costs incurred in complying with this section, the state shall reimburse those institutions. To the extent that money is not provided by the federal government for that purpose, the state shall not reimburse financial institutions for their costs in complying with this section.

(n) By March 1, 1998, the Franchise Tax Board and the Department of Social Services, in consultation with counties and financial institutions, shall jointly propose an implementation plan for inclusion in the annual Budget Act, or in other legislation that would fund this program. The implementation plan shall take into account the program's financial benefits, including the costs of all participating private and public agencies. It is the intent of the

Legislature that this program shall result in a net savings to the state and the counties.

SEC. 2. Notwithstanding Section 7550.5 of the Government Code, the Franchise Tax Board shall report to the Legislature on or before March 31, 1998, and on or before March 31, 1999, on implementation of the provisions of this measure. At a minimum, the report shall include the following:

(1) A timeline for implementation of the matching program.

(2) A description of any difficulties in compiling data submitted by counties, providing data to financial institutions, and receiving match data from financial institutions.

(3) Recommendations for legislation to improve administration and cost efficiency of the matching system.

(4) A quantitative analysis, prepared and submitted by representatives of financial institutions, of the reasonable costs incurred, or which are likely to be incurred, by financial institutions in complying with this measure. If no quantitative analysis is submitted to the Franchise Tax Board, the report shall be considered complete without this analysis.

(5) A quantitative analysis of the benefits that accrue, or are reasonably likely to accrue, to the state, the counties, and custodial parents owed past-due support as a result of the enactment of the Financial Institution Match System.

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 698

An act to amend Section 368 of the Penal Code, relating to crime.

[Approved by Governor October 5, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 368 of the Penal Code is amended to read:

368. (a) (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years.

(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in subdivision (e) of Section 12022.7, the defendant shall receive an additional term of three years in the state prison, except that if the victim is 70 years of age or older the additional term shall be five years.

(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term of five years in the state prison, except that if the victim is 70 years of age or older the additional term shall be seven years.

(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor.

(c) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft or embezzlement, with respect to the property of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400), and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars ($400).

(d) As used in this section, "elder" means any person who is 65 years of age or older.

(e) As used in this section, "dependent adult" means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to,

persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. "Dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(f) As used in this section, "caretaker" means any person who has the care, custody, or control of or who stands in a position of trust with, an elder or a dependent adult.

(g) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (a) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (a) for any single offense.

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 699

An act to amend Sections 10232.1, 10234.93, and 10237.1 of, to amend and renumber Section 10232.8 of, to add Sections 10232.2, 10232.92, 10232.93, 10232.95, 10232.96, 10234.86, 10234.87, 10235.9, 10235.30, 10235.40, 10235.50, 10235.51, 10235.52, 10235.91, 10237.4, 10237.5, and 10237.6 to, and to repeal and add Section 10234.95 of, the Insurance Code, relating to health insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. (a) The Legislature finds as follows:

(1) Current California law requires that long-term care insurance policies and certificates provide substantial benefits to consumers in return for the premiums paid.

(2) Recent changes in federal law allow for the sale of long-term care policies and certificates that may be eligible for favorable federal tax treatment. However, to be eligible for favorable tax treatment, the policies and certificates must conform to federal standards for eligibility, benefits, and consumer protections.

(3) Pursuant to federal law, the eligibility requirements for benefits under a policy intended to be a federally qualified long-term care policy as defined by Public Law 104-191 may be more restrictive than the eligibility requirements for benefits in policies authorized under the current California Insurance Code. This means that some persons who purchase federally tax qualified policies and certificates may be required to have a greater level of disability before qualifying for benefits than individuals who purchase coverage that conforms to the more permissive eligibility requirements of the California Insurance Code as of January 1, 1997.

(4) Many Californians purchase long-term care insurance to protect themselves against the expenses of needing long-term care due to an illness or physical disability.

(5) The protection a consumer receives against future long-term care expenses by purchasing long-term care insurance depends in large part upon the inclusion in the policy of certain key consumer protection provisions: protection against erosion of the value of benefits from inflation, against unintentional lapse, and against changes in the personal and financial situation of the purchaser.

(6) The National Association of Insurance Commissioners (NAIC) and other distinguished groups have developed standards that insurers and states can adopt to enhance the value of long-term care insurance and protect long-term care insurance purchasers against inflation, lapses, rate increases, and other potential problems.

(7) The recently enacted federal Health Insurance Portability and Accountability Act of 1996 mandates that certain consumer protections be included in all policies that are intended to be federally tax qualified but these standards do not apply to policies that are not federally tax qualified.

(b) The Legislature declares it is in the interest of the people of California that:

(1) California consumers should be given opportunities to purchase both types of policies or certificates—those meeting the eligibility requirements of the California Insurance Code, but that are not intended to be federally qualified, and those meeting the requirements to be federally tax qualified.

(2) California consumers should be informed of the choices available and insurers, brokers, agents, and other entities engaged in the marketing of long-term care insurance should fully evaluate each applicant's situation and work to ensure that the applicant purchases

a policy best suited to that applicant's personal and financial circumstances.

(3) All long-term care insurance policies sold in California, including those intended to be tax qualified and those that are not, should be governed by a single set of standards that afford California insurance purchasers a high level of consumer protection.

(4) The laws governing the sale of long-term care insurance in California should be updated to incorporate the latest and best consumer protection standards available.

(5) It is the purpose of this act to authorize the sale in California of a new category of long-term care insurance policies and certificates intended to qualify under the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and to require that insurers continue to make available to California consumers policies and certificates that comply with the eligibility requirements of policies and certificates not intended to qualify for favorable tax treatment under Public Law 104-191. It is also the intent of the Legislature that consumers be informed of the choice of policies available and given appropriate information to make informed choices.

SEC. 2. Section 10232.1 of the Insurance Code is amended to read:

10232.1. (a) Every policy that is intended to be a qualified long-term care insurance contract as provided by Public Law 104-191 shall be identified as such by prominently displaying and printing on page one of the policy form and the outline of coverage and in the application the following words: "This contract for long-term care insurance is intended to be a federally qualified long-term care insurance contract and may qualify you for federal and state tax benefits." Every policy that is not intended to be a qualified long-term care insurance contract as provided by Public Law 104-191 shall be identified as such by prominently displaying and printing on page one of the policy form and the outline of coverage and in the application the following words: "This contract for long-term care insurance is not intended to be a federally qualified long-term care insurance contract."

(b) Any policy or certificate in which benefits are limited to the provision of institutional care shall be called a "nursing facility only" policy or certificate and the words "Nursing Facility Only" shall be prominently displayed on page one of the form and the outline of coverage. The commissioner may approve alternative wording if it is more descriptive of the benefits.

(c) Any policy or certificate in which benefits are limited to the provision of home care services, including community-based services, shall be called a "home care only" policy or certificate and the words "Home Care Only" shall be prominently displayed on page one of the form and the outline of coverage. The commissioner may approve alternative wording if it is more descriptive of the benefits.

(d) Only those policies or certificates providing benefits for both institutional care and home care may be called "comprehensive long-term care" insurance.

SEC. 3. Section 10232.2 is added to the Insurance Code, to read:

10232.2. (a) Every insurer that offers policies or certificates that are intended to be federally qualified long-term care insurance contracts, including riders to life insurance policies providing long-term care coverage, shall fairly and affirmatively concurrently offer and market long-term care insurance policies or certificates that are not intended to be federally qualified, as described in subdivision (a) of Section 10232.1.

(b) All long-term care insurance contracts, including riders to life insurance contracts providing long-term care coverage, approved after the effective date of this section shall meet all of the requirements of this chapter.

(c) Until January 1, 1999, or 90 days after approval of contracts submitted for approval pursuant to subdivision (b), whichever comes first, insurers may continue to offer and market previously approved long-term care insurance contracts.

(d) Group policies issued prior to January 1, 1997, shall be allowed to remain in force and not be required to meet the requirements of this chapter, as amended during the 1997 portion of the 1997-98 Regular Session, unless those polices cease to be treated as federally qualified long-term care insurance contracts. If such a policy or certificate issued on such a group policy ceases to be a federally qualified long-term care insurance contract under the grandfather rules issued by the United States Department of the Treasury pursuant to Section 7702B(f)(2) of the Internal Revenue Code, the insurer shall offer the policy and certificate holders the option to convert, on a guaranteed-issue basis, to a policy or certificate that is federally tax qualified if the insurer sells tax-qualified policies.

SEC. 4. Section 10232.8 of the Insurance Code is amended and renumbered to read:

10232.9. (a) Every long-term care policy or certificate that purports to provide benefits of home care or community-based services, shall provide at least the following:

(1) Home health care.

(2) Adult day care.

(3) Personal care.

(4) Homemaker services.

(5) Hospice services.

(6) Respite care.

(b) For purposes of this section, policy definitions of these benefits may be no more restrictive than the following:

(1) "Home health care" is skilled nursing or other professional services in the residence, including, but not limited to, part-time and intermittent skilled nursing services, home health aid services,

physical therapy, occupational therapy, or speech therapy and audiology services, and medical social services by a social worker.

(2) "Adult day care" is medical or nonmedical care on a less than 24-hour basis, provided in a licensed facility outside the residence, for persons in need of personal services, supervision, protection, or assistance in sustaining daily needs, including eating, bathing, dressing, ambulating, transferring, toileting, and taking medications.

(3) "Personal care" is assistance with the activities of daily living, including the instrumental activities of daily living, provided by a skilled or unskilled person under a plan of care developed by a physician or a multidisciplinary team under medical direction. "Instrumental activities of daily living" include using the telephone, managing medications, moving about outside, shopping for essentials, preparing meals, laundry, and light housekeeping.

(4) "Homemaker services" is assistance with activities necessary to or consistent with the insured's ability to remain in his or her residence, that is provided by a skilled or unskilled person under a plan of care developed by a physician or a multidisciplinary team under medical direction.

(5) "Hospice services" are outpatient services not paid by Medicare, that are 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, and to provide supportive care to the primary care giver and the family. Care may be provided by a skilled or unskilled person under a plan of care developed by a physician or a multidisciplinary team under medical direction.

(6) "Respite care" is short-term care provided in an institution, in the home, or in a community-based program, that is designed to relieve a primary care giver in the home. This is a separate benefit with its own conditions for eligibility and maximum benefit levels.

(c) Home care benefits shall not be limited or excluded by any of the following:

(1) Requiring a need for care in a nursing home if home care services are not provided.

(2) Requiring that skilled nursing or therapeutic services be used before or with unskilled services.

(3) Requiring the existence of an acute condition.

(4) Limiting benefits to services provided by Medicare-certified providers or agencies.

(5) Limiting benefits to those provided by licensed or skilled personnel when other providers could provide the service, except where prior certification or licensure is required by state law.

(6) Defining an eligible provider in a manner that is more restrictive than that used to license that provider by the state where the service is provided.

(7) Requiring "medical necessity" or similar standard as a criteria for benefits.

(d) Every comprehensive long-term care policy or certificate that provides for both institutional care and home care and that sets a daily, weekly, or monthly benefit payment maximum, shall pay a maximum benefit payment for home care that is at least 50 percent of the maximum benefit payment for institutional care, and in no event shall home care benefits be paid at a rate less than fifty dollars ($50) per day. Insurance products approved for residents in continuing care retirement communities are exempt from this provision.

Every such comprehensive long-term care policy or certificate that sets a durational maximum for institutional care, limiting the length of time that benefits may be received during the life of the policy or certificate, shall allow a similar durational maximum for home care that is at least one-half of the length of time allowed for institutional care.

SEC. 5. Section 10232.92 is added to the Insurance Code, to read:

10232.92. No insurer shall deliver or issue for delivery a long-term care insurance policy in this state unless the insurer offers to the policyholder, at time of application, an option to purchase a long-term care insurance policy that covers assisted living care in a licensed residential care facility or a residential care facility for the elderly as defined in the Health and Safety Code and pays a minimum benefit no less than 50 percent of the maximum benefit for institutional care. The option to purchase an assisted living benefit need not be made if coverage for assisted living that pays a minimum benefit no less than 50 percent of the maximum benefit for institutional care is already included in the policy.

SEC. 6. Section 10232.93 is added to the Insurance Code, to read:

10232.93. Every long-term care policy or certificate shall define the maximum lifetime benefit as a single dollar amount that may be used interchangeably for any home- and community-based services defined in Section 10232.9, assisted living benefit defined in Section 10232.92, or institutional care covered by the policy or certificate. There shall be no limit on any specific covered benefit except for a daily, weekly, or monthly limit set for home- and community-based care and for assisted living care, and for the limits for institutional care. Nothing in this section shall be construed as prohibiting limitations for reimbursement of actual expenses and incurred expenses up to daily, weekly, and monthly limits.

SEC. 6.3. Section 10232.95 is added to the Insurance Code, to read:

10232.95. Every long-term care policy or certificate that provides reimbursement for care in a nursing facility shall cover and reimburse for per diem expenses, as well as the costs of ancillary supplies and services, up to but not to exceed the maximum lifetime daily facility benefit of the policy or certificate.

SEC. 6.5. Section 10232.96 is added to the Insurance Code, to read:

10232.96. When a policy or certificate holder of an insurance contract issued prior to December 31, 1996, requests a material

modification to the contract as defined by federal law or regulations, the insurer, prior to approving such a request, shall provide written notice to the policy or certificate holder that the contract change requested may constitute a material modification that jeopardizes the federal tax status of the contract and appropriate tax advice should therefore be sought.

SEC. 7. Section 10234.86 is added to the Insurance Code, to read:

10234.86. (a) Every insurer shall maintain records for each agent of that agent's amount of replacement sales as a percent of the agent's total annual sales and the amount of lapses of long-term care insurance policies sold by the agent as a percent of the agent's total annual sales.

(b) Every insurer shall report annually by June 30, the 10 percent of its agents in the state with the greatest percentage of lapses and replacements as measured by subdivision (a).

(c) Every insurer shall report annually by June 30, the number of lapsed policies as a percent of its total annual sales in the state, as a percent of its total number of policies in force in the state, and as a total number of each policy form in the state, as of the end of the preceding calendar year.

(d) Every insurer shall report annually by June 30, the number of replacement policies sold as a percent of its total annual sales in the state and as a percent of its total number of policies in force in the state as of the end of the preceding calendar year.

(e) Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance.

SEC. 8. Section 10234.87 is added to the Insurance Code, to read:

10234.87. (a) If an insurer replaces a policy or certificate that it has previously issued, the insurer shall recognize past insured status by granting premium credits toward the premiums for the replacement policy or certificate. The premium credits shall equal five percent of the annual premium of the prior policy or certificate for each full year the prior policy or certificate was in force. The premium credit shall be applied toward all future premium payments for the replacement policy or certificate, but the cumulative credit allowed need not exceed 50 percent. No credit need be provided if a claim has been filed under the original policy or certificate.

(b) This section shall not apply to life insurance policies that accelerate benefits for long-term care.

SEC. 9. Section 10234.93 of the Insurance Code is amended to read:

10234.93. (a) Every insurer of long-term care in California shall:

(1) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.

(2) Establish marketing procedures to assure excessive insurance is not sold or issued.

(3) Submit to the commissioner within six months of the effective date of this act, a list of all agents or other insurer representatives authorized to solicit individual consumers for the sale of long-term care insurance. These submissions shall be updated at least semiannually.

(4) Provide the following continuing education and require that each agent or other insurer representative authorized to solicit individual consumers for the sale of long-term care insurance shall satisfactorily complete the following continuing education requirements which shall be part of, and not in addition to, the continuing education requirements in Section 1749.3:

(A) For licensees issued a license after January 1, 1992, eight hours of education in each of the first four 12-month periods beginning from the date of original license issuance and thereafter and eight hours of education prior to each license renewal.

(B) For licensees issued a license before January 1, 1992, eight hours of education prior to each license renewal.

Licensees shall complete the initial continuing education requirements of this section prior to being authorized to solicit individual consumers for the sale of long-term care insurance.

The continuing education required by this section shall consist of topics related to long-term care services and long-term care insurance, including, but not limited to, California regulations and requirements, available long-term care services and facilities, changes or improvements in services or facilities, and alternatives to the purchase of private long-term care insurance. On or before July 1, 1998, the following additional continuing education topics shall be required: differences in eligibility for benefits and tax treatment between policies intended to be federally qualified and those not intended to be federally qualified, the effect of inflation in eroding the value of benefits and the importance of inflation protection, and NAIC consumer suitability standards and guidelines.

(5) Display prominently on page one of the policy or certificate and the outline of coverage: "Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

(6) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of any such insurance.

(7) Every insurer or entity marketing long-term care insurance shall establish auditable procedures for verifying compliance with this subdivision.

(8) Every insurer shall provide to a prospective applicant, at the time of solicitation, written notice that the Health Insurance

Counseling and Advocacy Program (HICAP) provides health insurance counseling to senior California residents free of charge. Every agent shall provide the name, address, and telephone number of the local HICAP program and the statewide HICAP number, 1-800-434-0222.

(9) Provide a copy of the long-term care insurance shoppers guide developed by the California Department of Aging to each prospective applicant prior to the presentation of an application or enrollment form for insurance.

(b) In addition to other unfair trade practices, including those identified in this code, the following acts and practices are prohibited:

(1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.

(2) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(3) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

SEC. 10. Section 10234.95 of the Insurance Code is repealed.

SEC. 11. Section 10234.95 is added to the Insurance Code, to read:

10234.95. (a) Every insurer or other entity marketing long-term care insurance shall:

(1) Develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant.

(2) Train its agents in the use of its suitability standards.

(3) Maintain a copy of its suitability standards and make them available for inspection upon request by the commissioner.

(b) The agent and insurer shall develop procedures that take into consideration, when determining whether the applicant meets the standards developed by the insurer, the following:

(1) The ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage.

(2) The applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs.

(3) The value, benefits, and costs of the applicant's existing insurance, if any, when compared to the values, benefits, and costs of the recommended purchase or replacement.

(c) The issuer, and where an agent is involved, the agent, shall make reasonable efforts to obtain the information set out in subdivision (b). The efforts shall include presentation to the applicant, at or prior to application, of the "Long Term Care Insurance Personal Worksheet," contained in the Long Term Care Insurance Model Regulations of the National Association of Insurance Commissioners. The personal worksheet used by the insurer shall contain, at a minimum, the information in the NAIC worksheet in not less than 12-point type. The insurer may request the applicant to provide additional information to comply with its suitability standards. A copy of the issuer's personal worksheet shall be filed and approved by the commissioner.

(d) A completed personal worksheet shall be returned to the issuer prior to the issuer's consideration of the applicant for coverage, except the personal worksheet need not be returned for sale of employer group long-term care insurance to employees and their spouses and dependents.

(e) The sale or dissemination outside the company or agency by the issuer or agent of information obtained through the personal worksheet is prohibited.

(f) The issuer shall use the suitability standards it has developed pursuant to this section in determining whether issuing long-term care insurance coverage to an applicant is appropriate.

(g) Agents shall use the suitability standards developed by the insurer in marketing long-term care insurance.

(h) If the issuer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the issuer may reject the application. Alternatively, the issuers shall send the applicant a letter similar to the "Long-Term Care Insurance Suitability Letter" contained in the Long-Term Care Model Regulations of the National Association of Insurance Commissioners. However, if the applicant has declined to provide financial information, the issuer may use some other method to verify the applicant's intent. Either the applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file.

(i) The insurer shall report annually to the commissioner the total number of applications received from residents of this state, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the suitability standards, and the number who chose to conform after receiving a suitability letter.

(j) This section shall not apply to life insurance policies that accelerate benefits for long-term care.

SEC. 12. Section 10235.9 is added to the Insurance Code, to read:

10235.9. (a) Every insurer shall report annually by June 30 the total number of claims denied by each class of business in the state and the number of these claims denied for failure to meet the waiting period or because of a preexisting condition as of the end of the preceding calendar year.

(b) The insurer shall provide every policyholder or certificate holder whose claim is denied a written notice within 40 days of the date of denial of the reasons for the denial and all information directly related to the denial. Insurers shall annually report to the department the number of denied claims.

(c) The department shall make available to the public, upon request, the denial rate of claims by insurer.

SEC. 13. Section 10235.30 is added to the Insurance Code, to read:

10235.30. (a) No insurer may deliver or issue for delivery a long-term care policy in this state unless the insurer offers at the time of application an option to purchase a shortened benefit period nonforfeiture benefit with the following features:

(1) Eligibility begins no later than after 10 years of premium payments.

(2) The lifetime maximum benefit is no less than the dollar equivalent of three months of care at the nursing facility per diem benefit contained in the policy.

(3) The same benefits are payable, including the amounts and frequency in effect at the time of lapse, for a qualifying claim.

(4) The lifetime maximum benefit may be reduced by the amount of any claims already paid.

(5) Cash back, extended term, and reduced paid-up forms of nonforfeiture benefits shall not be allowed.

(b) This section shall not apply to life insurance policies that accelerate benefits for long-term care.

SEC. 14. Section 10235.40 is added to the Insurance Code, to read:

10235.40. (a) No individual long-term care policy or certificate shall be issued until the applicant has been given the right to designate at least one individual, in addition to the applicant, to receive notice of lapse or termination of a policy or certificate for nonpayment of premium. The insurer shall receive from each applicant one of the following:

(1) A written designation listing the name, address, and telephone number of at least one individual, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium.

(2) A waiver signed and dated by the applicant electing not to designate additional persons to receive notice. The required waiver shall read as follows:

"Protection Against Unintended Lapse.

I understand that I have the right to designate at least one person

other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until 30 days after a premium is due and unpaid. I elect not to designate any person to receive the notice.

Signature of Applicant Date"

(b) The insurer shall notify the insured of the right to change the written designation, no less often than once every two years.

(c) When the policyholder or certificate holder pays the premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan, the requirements contained in subdivision (a) need not be met until 60 days after the policyholder or certificate holder is no longer on that deduction payment plan. The application or enrollment form for a certified long-term care insurance policy or certificate shall clearly indicate the deduction payment plan selected by the applicant.

(d) No individual long-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least 30 days prior to the effective date of the lapse or termination, gives notice to the insured and to the individual or individuals designated pursuant to subdivision (a), at the address provided by the insured for purposes of receiving notice of lapse or termination. Notice shall be given by first-class United States mail, postage prepaid, not less than 30 days after a premium is due and unpaid. Notice shall be deemed to have been given as of five days after the date of mailing.

(e) Each long-term care insurance policy or certificate shall include a provision which, in the event of lapse, provides for reinstatement of coverage, if the insurer is provided with proof of the insured's cognitive impairment or the loss of functional capacity. This option shall be available to the insured if requested within five months after termination and shall allow for the collection of past due premium, where appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy certificate.

SEC. 15. Section 10235.50 is added to the Insurance Code, to read:

10235.50. (a) Every policy or certificate shall include a provision that gives the policyholder or certificate holder a right, exercisable any time after the first year, to retain a policy or certificate while lowering the premium in one or more of the following ways:

(1) Reducing the lifetime maximum benefit.

(2) Reducing the nursing facility per diem and reducing the home- and community-based service benefits of a home care only policy and of a comprehensive long-term care policy.

(3) Converting a "comprehensive long-term care" policy or certificate to a "Nursing Facility Only" or a "Home Care Only" policy or certificate, if the insurer issues those policies or certificates for sale in the state.

(b) The premium for the policy or certificate that is reduced in coverage will be based on the age of the insured at issue age and the premium rate applicable to the amount of reduced coverage at the original issue date.

(c) If the contract in force at the time a reduction in coverage is made provides for benefit adjustments for anticipated increases in the costs of long-term care services, then the reduced nursing facility per diem, lifetime maximum benefit, and daily, weekly, or monthly home care benefits shall be adjusted in the same manner and in the same amount as the contract in force prior to the reduction in coverage.

(d) In the event a policy or certificate is about to lapse, the insurer shall advise the insured of the options to lower the premium by reducing coverage and of the premiums applicable to the reduced coverage. The notice shall provide the insured at least 30 days in which to elect to reduce coverage and the policy shall be reinstated without underwriting if the insured elects the reduced coverage.

(e) In the event of a premium increase, the insured shall be offered the option to lower premiums and reduce coverage.

SEC. 16. Section 10235.51 is added to the Insurance Code, to read:

10235.51. (a) Every policy or certificate shall include a provision that gives the insured the option to elect, no less frequently than on each anniversary date after the policy or certificate is issued, to pay an extra premium for one or more riders that increase coverage in any of the following ways:

(1) Increase the amount of the per diem benefits.

(2) Increase the lifetime maximum benefit.

(3) Increase the amount of both the nursing facility per diem benefit and the home- and community-based care benefits of a comprehensive long-term care insurance policy or certificate.

(b) The premiums for the riders to increase coverage may be based on the attained age of the insured. The premium for the original policy or certificate will not be changed and will continue to be based on the insured's age when the original policy or certificate was issued.

(c) The insurer may require the insured to undergo new underwriting, in addition to the payment of an additional premium, to qualify for the additional coverage. The insurer may restrict the age for issuance of additional coverage and restrict the aggregate amount of additional coverage an insured may acquire to the maximum age and coverage the insurer allows when issuing a new policy or certificate.

SEC. 17. Section 10235.52 is added to the Insurance Code, to read:

10235.52. (a) Every policy shall contain a provision that, in the event the insurer develops new benefits or benefit eligibility not included in the previously issued policy, the insurer will grant current holders of its policies who are not in benefit or within the elimination period the following rights:

(1) The policyholder will be notified of the availability of the new benefits or benefit eligibility within 12 months.

(2) The insurer shall offer the policyholder new benefits or benefit eligibility in one of the following ways:

(A) By adding a rider to the existing policy and paying a separate premium for the new benefit or benefit eligibility based on the insured's attained age. The premium for the existing policy will remain unchanged based on the insured's age at issuance.

(B) By replacing the existing policy or certificate in accordance with Section 10234.87.

(C) By replacing the existing policy or certificate with a new policy or certificate in which case consideration for past insured status shall be recognized by setting the premium for the replacement policy or certificate at the issue age of the policy or certificate being replaced.

(b) The insured may be required to undergo new underwriting, but the underwriting can be no more restrictive than if the policyholder or certificate holder were applying for a new policy or certificate.

(c) The insurer of a group policy as defined under subdivisions (a) to (c), inclusive, of Section 10231.6 must offer the group policyholder the opportunity to have the new benefits and provisions extended to existing certificate holders, but the insurer is relieved of the obligations imposed by this section if the holder of the group policy declines the issuer's offer.

SEC. 18. Section 10235.91 is added to the Insurance Code, to read:

10235.91. In the event a non-medicaid national or state long-term care program is created through public funding that substantially duplicates benefits covered by the policy or certificate, the policyholder or certificate holder will be entitled to select either a reduction in future premiums or an increase in future benefits. An actuarial method for determining the premium reductions and increases in future benefits will be mutually agreed upon by the department and insurers. The amount of the premium reductions and future benefit increases to be made by each insurer will be based on the extent of the duplication of covered benefits, the amount of past premium payments, and claims experience. Each insurer's premium reduction and benefit increase plans shall be filed and approved by the department.

SEC. 19. Section 10237.1 of the Insurance Code is amended to read:

10237.1. No insurer may deliver or issue for delivery a long-term care insurance policy in this state unless the insurer offers to the

policyholder, in addition to any other inflation protection, the option to purchase a long-term care insurance policy that provides for benefit levels to increase with benefit maximums or reasonable durations that are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. Insurers shall offer to each policyholder, at the time of purchase, the option to purchase a long-term care insurance policy containing an inflation protection feature which is no less favorable than one that does one or more of the following:

(a) Increases benefit levels annually in a manner so that the increases are compounded annually at a rate of not less than 5 percent.

(b) Guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined. The amount of the additional benefit shall be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least 5 percent for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made.

(c) Covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount limit.

SEC. 20. Section 10237.4 is added to the Insurance Code, to read:

10237.4. (a) Inflation protection benefit increases under a policy that contains these benefits shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the policy.

(b) An offer of inflation protection that provides for automatic benefit increases shall include an offer of a premium which the insurer expects to remain constant. The offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

SEC. 21. Section 10237.5 is added to the Insurance Code, to read:

10237.5. (a) An inflation protection provision that increases benefit levels annually in a manner so that the increases are compounded annually at a rate not less than 5 percent shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder.

(b) The rejection, to be included in the application or on a separate form, shall state:

"I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specially, I have reviewed the plan, and I reject inflation protection.

_____ _____

Signature of Applicant Date"

SEC. 22. Section 10237.6 is added to the Insurance Code, to read:

10237.6. (a) An insurer shall include the following information in or with the outline of coverage:

(1) A graphic comparison of the benefit levels of a policy that increases benefits at a compounded annual rate of not less than 5 percent over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a 20-year period.

(2) Any expected premium increases or additional premiums to pay for automatic or optional benefit increases.

(b) An insurer may use a reasonable hypothetical or graphic demonstration for purposes of this disclosure.

SEC. 23. This act shall become operative only if Senate Bill 527 and Assembly Bill 1483 are also enacted and become effective on or before January 1, 1998.

SEC. 24. 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 Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) providing for tax deductibility of certain long-term care insurance policies, it is necessary that this act take effect immediately.

CHAPTER 700

An act to amend Section 10232.1 of, and to add Sections 10232.2 and 10232.8 to, the Insurance Code, and to amend Section 22005 of the Welfare and Institutions Code, relating to health insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 10232.1 of the Insurance Code is amended to read:

10232.1. (a) Every policy that is intended to be a qualified long-term care insurance contract as provided by Public Law 104-191 shall be identified as such by prominently displaying and printing on page one of the policy form and the outline of coverage and in the application the following words: "This contract for long-term care insurance is intended to be a federally qualified long-term care insurance contract and may qualify you for federal and state tax benefits." Every policy that is not intended to be a qualified long-term care insurance contract as provided by Public Law 104-191

shall be identified as such by prominently displaying and printing on page one of the policy form and the outline of coverage and in the application the following words: "This contract for long-term care insurance is not intended to be a federally qualified long-term care insurance contract."

(b) Any policy or certificate in which benefits are limited to the provision of institutional care shall be called a "nursing facility only" policy or certificate and the words "Nursing Facility Only" shall be prominently displayed on page one of the form and the outline of coverage. The commissioner may approve alternative wording if it is more descriptive of the benefits.

(c) Any policy or certificate in which benefits are limited to the provision of home care services, including community-based services, shall be called a "home care only" policy or certificate and the words "Home Care Only" shall be prominently displayed on page one of the form and the outline of coverage. The commissioner may approve alternative wording if it is more descriptive of the benefits.

(d) Only those policies or certificates providing benefits for both institutional care and home care may be called "comprehensive long-term care" insurance.

SEC. 2. Section 10232.2 is added to the Insurance Code, to read:

10232.2. (a) Every insurer that offers policies or certificates that are intended to be federally qualified long-term care insurance contracts, including riders of life insurance contracts providing long-term care coverage, shall fairly and affirmatively concurrently offer and market long-term care insurance policies or certificates that are not intended to be federally qualified, as described in subdivision (a) of Section 10232.1.

(b) All long-term care insurance contracts, including riders to life insurance contracts providing long-term care coverage, approved after the effective date of this section shall meet all of the requirements of this chapter.

(c) Until January 1, 1999, or 90 days after approval of contracts submitted for approval pursuant to subdivision (b), whichever comes first, insurers may continue to offer and market previously approved long-term care insurance contracts.

(d) Group policies issued prior to January 1, 1997, shall be allowed to remain in force and not be required to meet the requirements of this chapter, as amended during the 1997 portion of the 1997-98 Regular Session, unless those policies cease to be treated as federally qualified long-term care insurance contracts. If such a policy or certificate issued on such a group policy ceases to be a federally qualified long-term care insurance contract under the grandfather rules issued by the United States Department of the Treasury pursuant to Section 7702B(f)(2) of the Internal Revenue Code, the insurer shall offer the policy and certificate holders the option to convert, on a guaranteed-issue basis, to a policy or certificate that is federally tax qualified if the insurer sells tax-qualified policies.

SEC. 3. Section 10232.8 is added to the Insurance Code, to read:

10232.8. (a) In every long-term care policy or certificate that is not intended to be a federally qualified long-term care insurance contract and provides home care benefits, the threshold establishing eligibility for home care benefits shall be at least as permissive as a provision that the insured will qualify if either one of two criteria are met:

(1) Impairment in two out of seven activities of daily living.

(2) Impairment of cognitive ability.

The policy or certificate may provide for lesser but not greater eligibility criteria. The commissioner, at his or her discretion, may approve other criteria or combinations of criteria to be substituted, if the insurer demonstrates that the interest of the insured is better served.

"Activities of daily living" in every policy or certificate that is not intended to be a federally qualified long-term care insurance contract and provides home care benefits shall include eating, bathing, dressing, ambulating, transferring, toileting, and continence; "impairment" means that the insured needs human assistance, or needs continual substantial supervision; and "impairment of cognitive ability" means deterioration or loss of intellectual capacity due to organic mental disease, including Alzheimer's disease or related illnesses, that requires continual supervision to protect oneself or others.

(b) In every long-term care policy approved or certificate issued after the effective date of the act adding this section, that is intended to be a federally qualified long-term care insurance contract as described in subdivision (a) of Section 10232.1, the threshold establishing eligibility for home care benefits shall provide that a chronically ill insured will qualify if either one of two criteria are met or if a third criterion, as provided by this subdivision, is met:

(1) Impairment in two out of six activities of daily living.

(2) Impairment of cognitive ability.

Other criteria shall be used in establishing eligibility for benefits if federal law or regulations allow other types of disability to be used applicable to eligibility for benefits under a long-term care insurance policy. If federal law or regulations allow other types of disability to be used, the commissioner shall promulgate emergency regulations to add such other criteria as a third threshold to establish eligibility for benefits. Insurers shall submit policies for approval within 60 days of the effective date of the regulations. With respect to policies previously approved, the department is authorized to review only the changes made to the policy. All new policies approved and certificates issued after the effective date of the regulation shall include the third criterion. No policy shall be sold that does not include the third criterion after one year beyond the effective date of the regulations. An insured meeting this third criterion shall be eligible for benefits regardless of whether the individual meets the

impairment requirements in paragraph (1) or (2) regarding activities of daily living and cognitive ability.

(c) A licensed health care practitioner, independent of the insurer, shall certify that the insured meets the definition of "chronically ill individual" as defined under Public Law 104-191. In the event a health care practitioner makes a determination, pursuant to this section, that an insured does not meet the definition of "chronically ill individual," the insurer shall notify the insured that the insured shall be entitled to a second assessment by a licensed health care practitioner, upon request, who shall personally examine the insured. The requirement for a second assessment shall not apply if the initial assessment was performed by a practitioner who otherwise meets the requirements of this section and who personally examined the insured. The assessments conducted pursuant to this section shall be performed promptly with the certification completed as quickly as possible to ensure that an insured's benefits are not delayed. The written certification shall be renewed every 12 months. A licensed health care practitioner shall develop a written plan of care after personally examining the insured. The costs to have a licensed health care practitioner certify that an insured meets, or continues to meet, the definition of "chronically ill individual," or to prepare written plans of care shall not count against the lifetime maximum of the policy or certificate. In order to be considered "independent of the insurer," a licensed health care practitioner shall not be an employee of the insurer and shall not be compensated in any manner that is linked to the outcome of the certification. It is the intent of this section that the practitioner's assessments be unhindered by financial considerations.

(d) "Activities of daily living" in every policy or certificate intended to be a federally qualified long-term care insurance contract as provided by Public Law 104-191 shall include eating, bathing, dressing, transferring, toileting, and continence; "impairment in activities of daily living" means the insured needs "substantial assistance" either in the form of "hands-on assistance" or "standby assistance," due to a loss of functional capacity to perform the activity; "impairment of cognitive ability" means the insured needs substantial supervision due to severe cognitive impairment; "licensed health care practitioner" means a physician, registered nurse, licensed social worker, or other individual whom the Secretary of the United States Department of the Treasury may prescribe by regulation; and "plan of care" means a written description of the insured's needs and a specification of the type, frequency, and providers of all formal and informal long-term care services required by the insured, and the cost, if any.

(e) Until such time as these definitions may be superseded by federal law or regulation, the terms "substantial assistance," "hands-on assistance," "standby assistance," "severe cognitive impairment," and "substantial supervision" shall be defined

according to the safe-harbor definitions contained in Internal Revenue Service Notice 97-31, issued May 6, 1997.

(f) The definitions of "activities of daily living" to be used in policies and certificates that are intended to be federally qualified long-term care insurance shall be the following until the time that these definitions may be superseded by federal law or regulations:

(1) Eating, which shall mean feeding oneself by getting food in the body from a receptacle (such as a plate, cup, or table) or by a feeding tube or intravenously.

(2) Bathing, which shall mean washing oneself by sponge bath or in either a tub or shower, including the act of getting into or out of a tub or shower.

(3) Continence, which shall mean the ability to maintain control of bowel and bladder function; or when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene (including caring for a catheter or colostomy bag).

(4) Dressing, which shall mean putting on and taking off all items of clothing and any necessary braces, fasteners, or artificial limbs.

(5) Toileting, which shall mean getting to and from the toilet, getting on or off the toilet, and performing associated personal hygiene.

(6) Transferring, which shall mean the ability to move into or out of bed, a chair or wheelchair.

The commissioner may approve the use of definitions of "activities of daily living" that differ from the verbatim definitions of this subdivision if these definitions would result in more policy or certificate holders qualifying for long-term care benefits than would occur by the use of the verbatim definitions of this subdivision. In addition, the following definitions may be used without the approval of the commissioner: (1) the verbatim definitions of eating, bathing, dressing, toileting, transferring, and continence in subdivision (g); or (2) the verbatim definitions of eating, bathing, dressing, toileting, and continence in this subdivision and a substitute, verbatim definition of "transferring" as follows: "transferring," which shall mean the ability to move into and out of a bed, a chair, or wheelchair, or ability to walk or move around inside or outside the home, regardless of the use of a cane, crutches, or braces.

The definitions to be used in policies and certificates for impairment in activities of daily living, "impairment in cognitive ability," and any third eligibility criterion adopted by regulation pursuant to subdivision (b), shall be the verbatim definitions of these benefit eligibility triggers allowed by federal regulations. In addition to the verbatim definitions, the commissioner may approve additional descriptive language to be added to the definitions, if the additional language is (1) warranted based on federal or state laws, federal or state regulations, or other relevant federal decision, and (2) strictly limited to that language which is necessary to ensure that

the definitions required by this section are not misleading to the insured.

(g) The definitions of "activities of daily living" to be used verbatim in policies and certificates that are not intended to qualify for favorable tax treatment under Public Law 104-191 shall be the following:

(1) Eating, which shall mean reaching for, picking up, and grasping a utensil and cup; getting food on a utensil, and bringing food, utensil, and cup to mouth; manipulating food on plate; and cleaning face and hands as necessary following meals.

(2) Bathing, which shall mean cleaning the body using a tub, shower, or sponge bath, including getting a basin of water, managing faucets, getting in and out of tub or shower, and reaching head and body parts for soaping, rinsing, and drying.

(3) Dressing, which shall mean putting on, taking off, fastening, and unfastening garments and undergarments and special devices such as back or leg braces, corsets, elastic stockings or garments, and artificial limbs or splints.

(4) Toileting, which shall mean getting on and off a toilet or commode and emptying a commode, managing clothing and wiping and cleaning the body after toileting, and using and emptying a bedpan and urinal.

(5) Transferring, which shall mean moving from one sitting or lying position to another sitting or lying position; for example, from bed to or from a wheelchair or sofa, coming to a standing position, or repositioning to promote circulation and prevent skin breakdown.

(6) Continence, which shall mean the ability to control bowel and bladder as well as use ostomy or catheter receptacles, and apply diapers and disposable barrier pads.

(7) Ambulating, which shall mean walking or moving around inside or outside the home regardless of the use of a cane, crutches, or braces.

SEC. 4. Section 22005 of the Welfare and Institutions Code is amended to read:

22005. The department shall only certify long-term care insurance policies and health care service plan contracts which cover long-term care that provide all of the following:

(a) Individual case management by a coordinating entity designated or approved by the department.

(b) The levels and durations of benefits which meet minimum standards set by the department.

(c) Protection against loss of benefits due to inflation.

(d) A recordkeeping system including an explanation of benefit report on insurance payments or benefits which count toward Medi-Cal resource exclusion.

(e) Approval of the insurance policy by the Department of Insurance as meeting the requirements of Chapter 2.6 (commencing with Section 10230) of Part 2 of Division 2 of the Insurance Code,

excepting the requirements of Sections 10232.1, 10232.2, 10232.25, 10232.8, 10232.9, and 10232.92, or approval of the health care service plan contract by the Department of Corporations pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code as providing substantially equivalent coverage to that required by Chapter 2.6 (commencing with Section 10230) of Part 2 of Division 2 of the Insurance Code.

(f) Compliance with any other requirements imposed by the department through regulations consistent with the purposes of this division.

SEC. 5. This act shall become operative only if SB 527 and SB 1052 are also enacted and become effective on or before January 1, 1998.

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 implement the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) providing for tax deductibility of certain long-term care insurance policies, it is necessary that this act take effect immediately.

CHAPTER 701

An act to add Section 10232.2 to, and to add and repeal Section 10232.25 of, the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 10232.2 is added to the Insurance Code, to read:

10232.2. (a) Every insurer that offers policies or certificates that are intended to be federally qualified long-term care insurance contracts, including riders to life insurance policies providing long-term care coverage, shall fairly and affirmatively concurrently offer and market long-term care insurance policies or certificates that are not intended to be federally qualified, as described in subdivision (a) of Section 10232.1.

(b) All long-term care insurance contracts, including riders to life insurance contracts providing long-term care coverage, approved after the effective date of this section shall meet all of the requirements of this chapter.

(c) Until January 1, 1999, or 90 days after approval of contracts submitted for approval pursuant to subdivision (b), whichever

comes first, insurers may continue to offer and market previously approved long-term care insurance contracts.

(d) Group policies issued prior to January 1, 1997, shall be allowed to remain in force and not be required to meet the requirements of this chapter, as amended during the 1997 portion of the 1997–98 Regular Session, unless those polices cease to be treated as federally qualified long-term care insurance contracts. If such a policy or certificate issued on such a group policy ceases to be a federally qualified long-term care insurance contract under the grandfather rules issued by the United States Department of the Treasury pursuant to Section 7702B(f)(2) of the Internal Revenue Code, the insurer shall offer the policy and certificate holders the option to convert, on a guaranteed-issue basis, to a policy or certificate that is federally tax qualified if the insurer sells tax-qualified policies.

SEC. 2. Section 10232.25 is added to the Insurance Code, to read:

10232.25. (a) Each insurer that offers long-term care coverage pursuant to Section 10232.2 shall make available at the time of a solicitation the following notice in a separate document, in 12-point type, to be signed and dated by the applicant and agent or insurer, with a copy provided to the applicant and the original maintained in accordance with paragraph (8) of subdivision (c) of Section 10508:

IMPORTANT NOTICE

THIS COMPANY OFFERS TWO TYPES OF LONG-TERM CARE POLICIES IN CALIFORNIA:

(1) LONG-TERM CARE POLICIES (OR CERTIFICATES) INTENDED TO QUALIFY FOR FEDERAL AND STATE OF CALIFORNIA TAX BENEFITS.

AND

(2) LONG-TERM CARE POLICIES (OR CERTIFICATES) THAT MEET CALIFORNIA STANDARDS AND ARE NOT INTENDED TO QUALIFY FOR FEDERAL OR STATE OF CALIFORNIA TAX BENEFITS BUT WHICH MAY MAKE IT EASIER TO QUALIFY FOR HOME CARE BENEFITS.

(1) POLICIES INTENDED TO QUALIFY FOR TAX BENEFITS	(2) POLICIES NOT INTENDED TO QUALIFY FOR TAX BENEFITS
(A) ELIGIBILITY FOR BENEFITS	**(A) ELIGIBILITY FOR BENEFITS**
You will not be paid for any home care services you need until: You are unable to do 2 out of 6 ADLs (Activities of Daily Living) which include: — bathing — dressing — continence — toileting — transferring — eating OR You need help due to Severe Cognitive Impairment (Please see the outline of coverage for a definition of each of the above ADL terms)	You will not be paid for any home care services you need until: You are unable to do 2 out of 7 ADLs (Activities of Daily Living) which include: — bathing — dressing — continence — toileting — transferring — eating or — ambulating (this added ADL may make it easier to qualify for home care benefits) OR You need help due to Cognitive Impairment (Please see the outline of coverage for a definition of each of the above ADL terms)
A health care practitioner must certify that the insured will need assistance with Activities of Daily Living for at least a period of 90 days.	No 90-day certification requirement. Some policies may provide benefits for serious illnesses of less than 90 days. (Please see the outline of coverage for your policy provisions)
In general, no policy benefits can be paid for services covered by Medicare or be applied to pay for Medicare deductibles or copayments.	In general, there are no limitations regarding the use of policy benefits for Medicare-related services.

(B) FEDERAL AND STATE TAX TREATMENT	(B) FEDERAL AND STATE TAX TREATMENT
Premiums are intended to be deductible as a medical expense if you itemize deductions on your tax returns. —Medical expenses must exceed 7.5% of your adjusted gross income. —The amount you can deduct is capped, based on your age and adjusted gross income.	Premiums are not intended to be deductible on your tax returns.
Benefits paid under the policy are not intended to be taxed as income.	Benefits paid under the policy may or may not be taxed as income. Should the IRS treat these benefits as taxable income, the costs you pay for care may or may not be eligible as an offsetting tax deduction. Neither federal law, nor the IRS, has taken a position on these issues.

If you have further questions regarding your choice of policies, you may wish to contact your local Health Insurance Counseling and Advocacy Program (**HICAP**) office which provides long-term care insurance counseling free of charge. Your insurance agent or insurer is required to provide you with the name, address and telephone number of your local HICAP office The statewide HICAP telephone number is 1-800-434-0222.

If you have questions about the potential tax impacts of these two types of policies, you may wish to consult a **TAX ADVISER** before deciding which type of policy you wish to purchase.

Your agent or insurer is required by law to provide you with this form which displays the major differences between these two types of policies. Before signing this disclosure form and your application, please discuss with your agent or insurer the above side-by-side comparison information regarding these two types of policies.

Applicant_____	Agent or Insurer_____
Date:_____	Date:_____

A copy of this form is to be provided to the applicant.

(b) The notice required by subdivision (a) shall be made available by employers to employees and dependents who are offered by employers a choice of the two types of policies described and apply for coverage.

(c) The commissioner, after consulting with the Health Insurance Counseling and Advocacy Program, and after issuing a public notice and receiving public comments, may approve modifications to the language in the notice set forth in subdivision (a), if the modifications (1) are warranted based on federal or state laws, federal regulations, or other relevant federal decisions, and (2) are strictly limited to those necessary to ensure that the summary notice required by this section does not provide false or misleading information.

SEC. 3. Subdivision (a) of Section 10232.2 of the Insurance Code, and Section 2 of this act shall become inoperative when both of the following requirements have been met:

(1) The Insurance Commissioner finds by substantial evidence, following one or more public hearings, that federal law or regulations, or other relevant federal decisions, allow long-term care coverage that conforms to the California eligibility requirements of subdivision (a) of Section 10232.8 of the Insurance Code to qualify for favorable tax treatment under Public Law 104-191.

(2) The Insurance Commissioner issues a regulation or order that requires insurers that wish to market and sell long-term care policies to conform to the California eligibility requirements of subdivision (a) of Section 10232.8 of the Insurance Code, and files a notice of that regulation or order with the Secretary of State.

(b) Section 2 of this act shall be repealed on January 1 following the filing of the notice with the Secretary of State under subdivision (a), unless a later enacted statute, that becomes operative on or before that date deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Unless subdivision (a) of Section 10232.2 of the Insurance Code, and Section 2 of this act become inoperative at an earlier date pursuant to Section 3 of this act, subdivision (a) of Section 10232.2 of the Insurance Code, and Section 2 of this act shall become inoperative on July 1, 2001, and as of January 1, 2002, Section 2 of this act shall be repealed, unless a later enacted statute, that becomes operative on or before January 1, 2002, deletes or extends those dates.

SEC. 5. This act shall become operative only if Assembly Bill 1483 and Senate Bill 1052 are also enacted and become effective on or before January 1, 1998.

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 immediately make available in California long-term care insurance policies that protect the health of senior citizens and conform to the provisions of the Health Insurance Portability and

Accountability Act of 1996 (P.L. 104-191), it is necessary that this act take effect immediately.

CHAPTER 702

An act to amend Section 7056 of, to add Section 7051.3 to, to add a chapter heading to, and to add Chapter 2 (commencing with Section 7221) to, Part 1.5 of Division 2 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 5, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 7051.3 is added to the Revenue and Taxation Code, to read:

7051.3. (a) "Use tax direct payment permit" means a permit issued by the board that allows a taxpayer to self-assess and pay state and local use tax under Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), and if otherwise applicable, Part 1.6 (commencing with Section 7251), and Part 1.7 (commencing with Section 7280) directly to the board.

(b) Every person seeking to pay use taxes directly to the board shall file an application for a use tax direct payment permit. An application for a use tax direct payment permit shall be made upon a form prescribed by the board and shall set forth the name under which the applicant transacts or intends to transact business, the location of the place or places of business where the applicant intends to make direct payment of use tax, and any other information that the board may require. An applicant for a use tax direct payment permit may register as a place to make direct payment of use tax, any of the places of business in this state that the applicant expects to be a place of first use for purchases subject to use tax, in accordance with the requirements of subdivision (d). The application shall be signed by the owner, if a natural person; in the case of an association or partnership, by a member or partner; and in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application.

(c) Pursuant to an application, a use tax direct payment permit shall be issued to any person who meets all of the following conditions:

(1) The applicant agrees to self-assess and pay directly to the board any use tax liability incurred under this section.

(2) The applicant certifies to the board either of the following:

(A) The applicant is the purchaser for its own use or is the lessee of tangible personal property at a cost of five hundred thousand

dollars ($500,000) or more in the aggregate, during the calendar year immediately preceding the application for the permit.

(B) The applicant is a county, city, city and county, or redevelopment agency.

(d) Any person who holds a valid use tax direct payment permit shall self-assess and pay directly to the board use taxes due under this part, Part 1.5 (commencing with Section 7200), and if otherwise applicable, Part 1.6 (commencing with Section 7251), and Part 1.7 (commencing with Section 7280) for all purchases subject to use tax for which a use tax direct payment exemption certificate was issued, and shall report on the tax return required to be filed by Section 6452, the amount of local use tax applicable to each county, city, city and county, or redevelopment agency in which the first "use," as defined in Section 6009, occurs.

(e) The board shall allow any holder of a use tax direct payment permit to issue a use tax direct payment certificate to any registered retailer or seller subject to all of the following:

(1) The use tax direct payment certificate shall be in a form prescribed by the board, and shall be signed by, and bear the name, address, and permit number of, the holder of the use tax direct payment permit.

(2) Once a use tax direct payment certificate has been issued by a holder of a use tax direct payment permit, it shall remain effective until revised or withdrawn by the holder of the permit or until the retailer or seller has received actual notice that the permit has been revoked by the board.

(3) A use tax direct payment certificate relieves a person selling property from the duty of collecting use tax only if taken in good faith from a person who holds a use tax direct payment permit. A purchaser who issues a use tax direct payment certificate that is accepted in good faith by a seller or retailer of tangible personal property shall be the sole person liable for any sales tax and related interest and penalties with respect to any transaction that is subsequently determined by the board to be subject to sales tax and not use tax.

(4) Any person who holds a use tax direct payment permit and gives a use tax direct payment certificate to a seller or retailer shall, in addition to any applicable use tax liabilities, be subject to the same penalty provisions that apply to a seller or retailer.

(f) Each quarter the board shall allocate local use tax not reported to a county, city, city and county, or redevelopment agency, based upon the distribution of local use tax that has been reported to the county, city, city and county, or redevelopment agency in the prior quarter.

(g) It is the intent of the Legislature that the board administer this part in a manner which assures that local use tax be received by the county, city, city and county, or redevelopment agency where the first use occurs.

SEC. 2. Section 7056 of the Revenue and Taxation Code is amended to read:

7056. (a) (1) Excepting the information set forth on permits issued under Article 2 (commencing with Section 6066) of Chapter 2, the information set forth on certificates of registration issued pursuant to Section 6226, and the terms of any settlement made pursuant to Section 19442 (as amended by Chapter 138 of the Statutes of 1994), it is unlawful for the board, any person having an administrative duty under this part or any person who obtains access to information contained in, or derived from, sales or transactions and use tax records of the board pursuant to subdivision (b), to make known in any manner whatever the business affairs, operations, or any other information pertaining to any retailer or any other person required to report to the board or pay a tax pursuant to this part, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person.

(2) It is also unlawful for any person, other than an officer or employee of a county, city and county, city, or district, who obtains access to information contained in, or derived from, sales or transactions and use tax records of the board pursuant to subdivision (b), to retain that information after that person's contract with the county, city and county, city, or district has expired.

(3) Notwithstanding paragraphs (1) and (2), the Governor may, by general or special order, authorize examination by other state officers, by tax officers of another state, by the federal government, if a reciprocal arrangement exists, by the tax officials of Mexico, if a reciprocal agreement exists, or by any other person of the records maintained by the board under this part. The information so obtained pursuant to the order of the Governor shall not be made public except to the extent and in the manner that the order may authorize that it be made public.

(b) When requested by resolution of the legislative body of any county, city and county, city, or district, the board shall permit any duly authorized officer or employee of the county, city and county, city, or district, or other person designated by that resolution, to examine all of the sales or transactions and use tax records of the board pertaining to the ascertainment of those sales or transactions and use taxes to be collected for the county, city and county, city, or district by the board pursuant to contract entered into between the board and the county, city and county, city, or district under the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)). Except as otherwise provided herein, this subdivision shall not be construed to allow any officer, employee, or other person authorized or designated by a county, city and county, city, or district to examine

any sales or transactions and use tax records of any taxpayer. The costs that are incurred by the board in complying with a request made pursuant to this subdivision shall be deducted by the board from those revenues collected by the board on behalf of the county, city and county, city, or district making the request.

(1) The resolution shall certify that any person designated by the resolution, other than an officer or employee, meets all of the following conditions:

(A) Has an existing contract with the county, city and county, city, or district to examine those sales and use tax records.

(B) Is required by that contract to disclose information contained in, or derived from, those sales or transactions and use tax records only to an officer or employee of the county, city and county, city, or district who is authorized by the resolution to examine the information.

(C) Is prohibited by that contract from performing consulting services for a retailer during the term of that contract.

(D) Is prohibited by that contract from retaining the information contained in, or derived from, those sales or transactions and use tax records, after that contract has expired.

(2) Information obtained by examination of board records as permitted in this subdivision shall be used only for purposes related to the collection of local sales or transactions and use taxes by the board pursuant to the contract, or for purposes related to other governmental functions of the county, city and county, city, or district set forth in the resolution.

(c) If the board believes that any information obtained pursuant to subdivision (b) has been disclosed to any person not authorized or designated by the resolution of the legislative body of the county, city and county, city, or district, or has been used for purposes not permitted by subdivision (b), then notwithstanding subdivision (b), the board may impose conditions on access to its sales and use tax records which the board considers reasonable, in order to protect the confidentiality of those records.

(d) Predecessors, successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest, and penalties.

(e) For purposes of this section, "reciprocal agreement" means a formal agreement to exchange information between national taxing officials of Mexico and taxing authorities of the State Board of Equalization, the Franchise Tax Board, and the Employment Development Department. Furthermore, the reciprocal agreement shall be limited to the exchange of information which is essential for tax administration purposes only. Taxing authorities of the State of California shall be granted tax information only on California

residents. Taxing authorities of Mexico shall be granted tax information only on Mexican nationals.

SEC. 3. A chapter heading is added to Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code, immediately preceding Section 7200, to read:

CHAPTER 1. GENERAL PROVISIONS

SEC. 4. Chapter 2 (commencing with Section 7221) is added to Part 1.5 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 2. BRADLEY-BURNS BILL OF RIGHTS

7221. This chapter shall be known and may be cited as the Bradley-Burns Bill of Rights.

7222. For purposes of this chapter:

(a) "Contract" means any agreement for state administration of local sales and use taxes.

(b) "Local jurisdiction" means any local agency authorized to impose a tax under this part or in conformity with this part.

(c) "Local tax" means any tax imposed by a local jurisdiction under this part or any tax imposed in conformity with this part.

7223. The Legislature finds and declares all of the following:

(a) Each local jurisdiction that has a contract with the board has the right to depend on the board's staff to provide informative and responsive services to help local jurisdictions understand the local sales and use tax laws administered by the board.

(b) Local jurisdictions have the right to receive and the board has an obligation to provide open, uniform, and consistent administration of the local taxes in order that local jurisdictions may perform competent audit oversight and accountability of those revenues on their own behalf.

7224. Each local jurisdiction has the right to have the law administered in a uniform manner.

7225. Each local jurisdiction has the right to rely on the board's written information and answers to questions. Each local jurisdiction has the right to prompt and accurate responses from the board or its staff. Each local jurisdiction has the right to a written response to questions, and resolution of, any inquiry submitted in writing to the board.

7226. In addition to any charges imposed by the board pursuant to Section 7204.3, the board shall charge local jurisdictions for the costs of the board's services as required by this act. Any amount charged by the board pursuant to this section shall be deducted from those revenues collected by the board on behalf of local jurisdictions.

SEC. 5. The Legislature hereby recognizes that currently there are a number of claims pending before the State Board of Equalization relating to the distribution of local taxes that were filed

by, or on behalf of, various cities and counties. Section 7051.3 of the Revenue and Taxation Code shall not be construed to impair or otherwise affect the validity of any claim or the interpretation of any law or regulation applicable to any claim of incorrect distribution of a local tax filed with the State Board of Equalization or its staff by a local government agency or its representative designated pursuant to Section 7056 of the Revenue and Taxation Code that was filed prior to January 1, 1998.

CHAPTER 703

An act to add Section 24304.1 to the Government Code, to amend Sections 1463.007 and 1463.16 of the Penal Code, and to add and repeal Section 42007.1 of the Vehicle Code, relating to counties, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 24304.1 is added to the Government Code, to read:

24304.1. Notwithstanding the provisions of Section 24300, in counties of the 11th class, the board of supervisors by ordinance may consolidate the duties of certain of the county offices, in one or both of these combinations:

(a) County clerk, assessor, and recorder.

(b) Sheriff, coroner, and public administrator.

SEC. 2. Section 1463.007 of the Penal Code is amended to read:

1463.007. Notwithstanding any other provision of law, any county or court that implements or has implemented a comprehensive program to identify and collect delinquent fines and forfeitures, with or without warrant having been issued against the alleged violator, and for which the base fine excluding state and county penalties is at least one hundred dollars ($100), may deduct and deposit in the county treasury the cost of operating that program, excluding capital expenditures, from any revenues collected thereby prior to making any distribution of revenues to other governmental entities required by any other provision of law. This section does not apply to a defendant who is paying a fine or forfeiture through time payments, unless he or she is delinquent in making payments according to the agreed-upon payment schedule. This section shall apply to costs incurred by a court or county prior to the implementation of a time payments agreement. For purposes of this section, a comprehensive collection program is a separate and distinct revenue collection activity and shall include at least 10 of the following components:

(a) Monthly bill statements to all debtors.

(b) Telephone contact with delinquent debtors to apprise them of their failure to meet payment obligations.

(c) Issuance of warning letters to advise delinquent debtors of an outstanding obligation.

(d) Requests for credit reports to assist in locating delinquent debtors.

(e) Access to Employment Development Department employment and wage information.

(f) The generation of monthly delinquent reports.

(g) Participation in the Franchise Tax Board's tax intercept program.

(h) The use of Department of Motor Vehicle information to locate delinquent debtors.

(i) The use of wage and bank account garnishments.

(j) The imposition of liens on real property and proceeds from the sale of real property held by a title company.

(k) The filing of objections to the inclusion of outstanding fines and forfeitures in bankruptcy proceedings.

(*l*) Coordination with the probation department to locate debtors who may be on formal or informal probation.

(m) The initiation of drivers' license suspension actions where appropriate.

(n) The capability to accept credit card payments.

A comprehensive collection plan shall also include a provision that the county shall share any debt collection information acquired with state agencies entitled to proceeds of restitution fines and orders.

Any county that exercises the authority granted in this section for the purpose of enhancing its revenue collections shall file an annual report of its activities with the Legislature. The chief administrative officer of the county or the clerk of the board of supervisors of the county shall file the report with the Assembly and Senate committees on the judiciary and the budget.

This section is repealed as of January 1, 2000, unless a later enacted statute, which is enacted before this date, deletes or extends the date.

SEC. 3. Section 1463.16 of the Penal Code is amended to read:

1463.16. (a) Notwithstanding Section 1203.1 or 1463, fifty dollars ($50) of each fine collected for each conviction of a violation of Section 23103, 23104, 23152, or 23153 of the Vehicle Code shall be deposited with the county treasurer in a special account for exclusive allocation by the county for the county's alcoholism program, with approval of the board of supervisors, for alcohol programs and services for the general population. These funds shall be allocated through the local planning process pursuant to specific provision in the county alcohol program plan which is submitted to the State Department of Alcohol and Drug Programs. Programs shall be certified by the Department of Alcohol and Drug Programs or have made application for certification to be eligible for funding under this

section. The county shall implement the intent and procedures of subdivision (b) of Section 11812 of the Health and Safety Code while distributing funds under this section.

(b) In a county of the 1st, 2nd, 3rd, 15th, 19th, 20th, or 24th class, notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, fifty dollars ($50) for each conviction of a violation of Section 23103, 23104, 23152, or 23153 of the Vehicle Code shall be deposited in a special account for exclusive allocation by the administrator of the county's alcoholism program, with approval of the board of supervisors, for alcohol programs and services for the general population. These funds shall be allocated through the local planning process pursuant to a specific provision in the county plan which is submitted to the State Department of Alcohol and Drug Programs. For those services for which standards have been developed and certification is available, programs shall be certified by the State Department of Alcohol and Drug Programs or shall apply for certification to be eligible for funding under this section. The county alcohol administrator shall implement the intent and procedures of subdivision (b) of Section 11812 of the Health and Safety Code while distributing funds under this section.

(c) The Board of Supervisors of Contra Costa County may, by resolution, authorize the imposition of a fifty dollar ($50) assessment by the court upon each defendant convicted of a violation of Section 23152 or 23153 of the Vehicle Code for deposit in the account from which the fifty dollar ($50) distribution specified in subdivision (a) is deducted.

(d) It is the specific intent of the Legislature that funds expended under this part shall be used for ongoing alcoholism program services as well as for contracts with private nonprofit organizations to upgrade facilities to meet state certification and state licensing standards and federal nondiscrimination regulations relating to accessibility for handicapped persons.

(e) Counties may retain up to 5 percent of the funds collected to offset administrative costs of collection and disbursement.

SEC. 4. Section 42007.1 is added to the Vehicle Code, to read:

42007.1. Notwithstanding Section 42007, on and after the effective date of this section to and including December 31, 1998:

(a) The fee collected by the clerk pursuant to subdivision (a) of Section 42007 shall be in an amount equal to the total bail set forth for the eligible offense on the uniform countywide bail schedule plus twenty-four dollars ($24).

(b) The fee revenues shall be allocated as follows rather than as specified in subdivision (b) of Section 42007:

(1) Twenty-four dollars ($24) of each fee collected shall be deposited in the General Fund.

(2) Seventy-seven percent of the remaining amount shall be deposited in the General Fund, except that 14 percent of the revenues allocated pursuant to this paragraph from fees received on

or after January 1, 1998, shall be deposited in the State Courthouse Construction Fund.

(3) The remaining amount collected under subdivision (a) of Section 42007 shall be allocated as provided in paragraph (2) of subdivision (b) of Section 42007.

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

SEC. 5. 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 potential candidates from filing candidacy papers for positions that would be eliminated due to consolidation and to ensure that projected local revenue losses relating to the operation of a comprehensive collection program of fines and forfeitures do not occur, it is necessary that this act take effect immediately.

CHAPTER 704

An act to amend Sections 1601, 1616.5, and 1742 of, and to add Sections 160.5 and 1616.1 to, the Business and Professions Code, and to amend Section 830.3 of the Penal Code, relating to dentistry.

[Approved by Governor October 5, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 160.5 is added to the Business and Professions Code, to read:

160.5. All civil service employees currently employed by the Board of Dental Examiners of the Department of Consumer Affairs, whose functions are transferred as a result of the act adding this section shall retain their positions, status, and rights pursuant to Section 19050.9 of the Government Code and the State Civil Service Act, Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code. The transfer of employees as a result of the act adding this section shall occur no later than July 1, 1999.

SEC. 2. Section 1601 of the Business and Professions Code is amended to read:

1601. There is in the Department of Consumer Affairs a Board of Dental Examiners of California in which the administration of this chapter is vested. The board consists of eight practicing dentists, one registered dental hygienist, one registered dental assistant, and four public members. The board shall be organized into standing

committees dealing with examinations, enforcement, and other subjects as the board deems appropriate.

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. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 2.5. Section 1601 of the Business and Professions Code is amended to read:

1601. There is in the Department of Consumer Affairs a Board of Dental Examiners of California in which the administration of this chapter is vested. The board consists of eight practicing dentists, one registered dental hygienist, one registered dental assistant, and four public members, none of whom shall have engaged in the practice of dentistry, dental hygiene, or dental assisting. The board shall be organized into standing committees dealing with examinations, enforcement, and other subjects as the board deems appropriate.

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. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 3. Section 1616.1 is added to the Business and Professions Code, to read:

1616.1. The board shall study the scope of the duties of investigators hired by the board, the level of complexity of the different investigations, and the volume of complaints according to complexity. This study shall consider not only the most recent year's activities for which there is information, but shall also review historical information that would help determine any trend in the volume of complexity of investigation. In conducting the study required by this section, the board shall consult with the Department of Consumer Affairs and the Joint Legislative Sunset Review Committee.

The findings of this study shall be documented in a written report, which shall be submitted to the Legislature by May 1, 1998.

SEC. 4. Section 1616.5 of the Business and Professions Code is amended to read:

1616.5. The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

This section shall become inoperative on July 1, 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. 5. Section 1742 of the Business and Professions Code is amended to read:

1742. (a) There is within the jurisdiction of the board a Committee on Dental Auxiliaries.

(b) The Committee on Dental Auxiliaries shall have the following areas of responsibility and duties:

(1) The committee shall have the following duties and authority related to education programs and curriculum:

(A) Shall evaluate all dental auxiliary programs applying for board approval, in accordance with board rules governing the programs.

(B) May appoint board members to any evaluation committee. Board members so appointed shall not make a final decision on the issue of program or course approval.

(C) Shall report and make recommendations to the board as to whether a program or course qualifies for approval. The board retains the final authority to grant or deny approval to a program or course.

(D) Shall review and document any alleged deficiencies that might warrant board action to withdraw or revoke approval of a program or course, at the request of the board.

(E) May review and document any alleged deficiencies that might warrant board action to withdraw or revoke approval of a program or course, at its own initiation.

(2) The committee shall have the following duties and authority related to applications:

(A) Shall review and evaluate all applications for licensure in the various dental auxiliary categories to ascertain whether a candidate meets the appropriate licensing requirements specified by statute and board regulations.

(B) Shall maintain application records, cashier application fees, and perform any other ministerial tasks as are incidental to the application process.

(C) May delegate any or all of the functions in this paragraph to its staff.

(D) Shall issue auxiliary licenses in all cases, except where there is a question as to a licensing requirement. The board retains final authority to interpret any licensing requirement. If a question arises in the area of interpreting any licensing requirement, it shall be presented by the committee to the board for resolution.

(3) The committee shall have the following duties and authority regarding examinations:

(A) Shall advise the board as to the type of license examination it deems appropriate for the various dental auxiliary license categories.

(B) Shall, at the direction of the board, develop or cause to be developed, administer, or both, examinations in accordance with the board's instructions and periodically report to the board on the progress of those examinations. The following shall apply to the examination procedure:

(i) The examination shall be submitted to the board for its approval prior to its initial administration.

(ii) Once an examination has been approved by the board, no further approval is required unless a major modification is made to the examination.

(iii) The committee shall report to the board on the results of each examination and shall, where appropriate, recommend pass points.

(iv) The board shall set pass points for all dental auxiliary licensing examinations.

(C) May appoint board members to any examination committee established pursuant to subparagraph (B).

(4) The committee shall periodically report and make recommendations to the board concerning the level of fees for dental auxiliaries and the need for any legislative fee increase. However, the board retains final authority to set all fees.

(5) The committee shall be responsible for all aspects of the license renewal process, which shall be accomplished in accordance with this chapter and board regulations. The committee may delegate any or all of its functions under this paragraph to its staff.

(6) The committee shall have no authority with respect to the approval of continuing education providers; the board retains all of this authority.

(7) The committee shall advise the board as to appropriate standards of conduct for auxiliaries, the proper ordering of enforcement priorities, and any other enforcement-related matters that the board may, in the future, delegate to the committee. The board retains all authority with respect to the enforcement actions, including, but not limited to, complaint resolution, investigation, and disciplinary action against auxiliaries.

(8) The committee shall have the following duties regarding regulations:

(A) Shall review and evaluate all suggestions or requests for regulatory changes related to dental auxiliaries.

(B) Shall report and make recommendations to the board, after consultation with departmental legal counsel and the board's executive officer.

(C) Shall include in any report regarding a proposed regulatory change, at a minimum, the specific language of the proposed changes and the reasons for and facts supporting the need for the change. The board has the final rulemaking authority.

(c) 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. The repeal of this section renders the committee subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 6. Section 830.3 of the Penal Code is amended to read:

830.3. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. These peace officers may carry firearms only if authorized and under those terms and conditions as specified by their employing agencies:

(a) Persons employed by the Division of Investigation of the Department of Consumer Affairs and investigators of the Medical Board of California and the Board of Dental Examiners, who are designated by the Director of Consumer Affairs, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code. The Director of Consumer Affairs shall designate as peace officers seven persons who shall at the time of their designation be assigned to the investigations unit of the Board of Dental Examiners.

(b) Voluntary fire wardens designated by the Director of Forestry and Fire Protection pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 4156 of that code.

(c) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 1655 of that code.

(d) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of this code.

(e) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 13104 of that code.

(f) Inspectors of the food and drug section designated by the chief pursuant to subdivision (a) of Section 106500 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 106500 of that code.

(g) All investigators of the Division of Labor Standards Enforcement designated by the Labor Commissioner, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Section 95 of the Labor Code.

(h) All investigators of the State Departments of Health Services, Social Services, Mental Health, Developmental Services, and Alcohol and Drug Programs, the Department of Toxic Substances Control, and the Office of Statewide Health Planning and Development, and the Public Employees' Retirement System, provided that the primary duty of these peace officers shall be the enforcement of the law relating to the duties of his or her department, or office. Notwithstanding any other provision of law, investigators of the Public Employees' Retirement System shall not carry firearms.

(i) The Chief of the Bureau of Fraudulent Claims of the Department of Insurance and those investigators designated by the chief, provided that the primary duty of those investigators shall be the enforcement of Section 550 of the Penal Code.

(j) Employees of the Department of Housing and Community Development designated under Section 18023 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 18023 of that code.

(k) Investigators of the office of the Controller, provided that the primary duty of these investigators shall be the enforcement of the law relating to the duties of that office. Notwithstanding any other law, except as authorized by the Controller, the peace officers designated pursuant to this subdivision shall not carry firearms.

(*l*) Investigators of the Department of Corporations designated by the Commissioner of Corporations, provided that the primary duty of these investigators shall be the enforcement of the provisions of law administered by the Department of Corporations. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(m) Persons employed by the Contractors' State License Board designated by the Director of Consumer Affairs pursuant to Section 7011.5 of the Business and Professions Code, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 7011.5, and in Chapter 9 (commencing with Section 7000) of Division 3, of that code. The Director of Consumer Affairs may designate as peace officers not more than three persons who shall at the time of their designation be assigned to the special investigations unit of the board. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

(n) The chief and coordinators of the Law Enforcement Division of the Office of Emergency Services.

(o) Investigators of the office of the Secretary of State designated by the Secretary of State, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of, and Section 12172.5 of, the Government Code. Notwithstanding

any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(p) The Deputy Director for Security designated by Section 8880.38 of the Government Code, and all lottery security personnel assigned to the California State Lottery and designated by the director, provided that the primary duty of any of those peace officers shall be the enforcement of the laws related to assuring the integrity, honesty, and fairness of the operation and administration of the California State Lottery.

(q) Investigators employed by the Investigation Division of the Employment Development Department designated by the director of the department, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 317 of the Unemployment Insurance Code.

Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(r) The chief and assistant chief of museum security and safety of the California Science Center, as designated by the executive director pursuant to Section 4108 of the Food and Agricultural Code, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 4108 of the Food and Agricultural Code.

(s) Notwithstanding any other provision of this section, a peace officer authorized by this section shall not be authorized to carry firearms by his or her employing agency until that agency has adopted a policy on the use of deadly force by those peace officers, and until those peace officers have been instructed in the employing agency's policy on the use of deadly force.

Every peace officer authorized pursuant to this section to carry firearms by his or her employing agency shall qualify in the use of the firearms at least every six months.

SEC. 7. Section 830.3 of the Penal Code is amended to read:

830.3. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. These peace officers may carry firearms only if authorized and under those terms and conditions as specified by their employing agencies:

(a) Persons employed by the Division of Investigation of the Department of Consumer Affairs and investigators of the Medical Board of California and the Board of Dental Examiners, who are designated by the Director of Consumer Affairs, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code. The Director of Consumer Affairs shall designate

as peace officers seven persons who shall at the time of their designation be assigned to the investigations unit of the Board of Dental Examiners.

(b) Voluntary fire wardens designated by the Director of Forestry and Fire Protection pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 4156 of that code.

(c) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 1655 of that code.

(d) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of this code.

(e) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 13104 of that code.

(f) Inspectors of the food and drug section designated by the chief pursuant to subdivision (a) of Section 106500 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 106500 of that code.

(g) All investigators of the Division of Labor Standards Enforcement designated by the Labor Commissioner, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Section 95 of the Labor Code.

(h) All investigators of the State Departments of Health Services, Social Services, Mental Health, Developmental Services, and Alcohol and Drug Programs, the Department of Toxic Substances Control, and the Office of Statewide Health Planning and Development, and the Public Employees' Retirement System, provided that the primary duty of these peace officers shall be the enforcement of the law relating to the duties of his or her department, or office. Notwithstanding any other provision of law, investigators of the Public Employees' Retirement System shall not carry firearms.

(i) The Chief of the Bureau of Fraudulent Claims of the Department of Insurance and those investigators designated by the chief, provided that the primary duty of those investigators shall be the enforcement of Section 550 of the Penal Code.

(j) Employees of the Department of Housing and Community Development designated under Section 18023 of the Health and Safety Code, provided that the primary duty of these peace officers

shall be the enforcement of the law as that duty is set forth in Section 18023 of that code.

(k) Investigators of the office of the Controller, provided that the primary duty of these investigators shall be the enforcement of the law relating to the duties of that office. Notwithstanding any other law, except as authorized by the Controller, the peace officers designated pursuant to this subdivision shall not carry firearms.

(*l*) Investigators of the Department of Corporations designated by the Commissioner of Corporations, provided that the primary duty of these investigators shall be the enforcement of the provisions of law administered by the Department of Corporations. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(m) Persons employed by the Contractors' State License Board designated by the Director of Consumer Affairs pursuant to Section 7011.5 of the Business and Professions Code, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 7011.5, and in Chapter 9 (commencing with Section 7000) of Division 3, of that code. The Director of Consumer Affairs may designate as peace officers not more than three persons who shall at the time of their designation be assigned to the special investigations unit of the board. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

(n) The chief and coordinators of the Law Enforcement Division of the Office of Emergency Services.

(o) Investigators of the office of the Secretary of State designated by the Secretary of State, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of, and Section 12172.5 of, the Government Code. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(p) The Deputy Director for Security designated by Section 8880.38 of the Government Code, and all lottery security personnel assigned to the California State Lottery and designated by the director, provided that the primary duty of any of those peace officers shall be the enforcement of the laws related to assuring the integrity, honesty, and fairness of the operation and administration of the California State Lottery.

(q) Investigators employed by the Investigation Division of the Employment Development Department designated by the director of the department, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 317 of the Unemployment Insurance Code.

Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(r) The chief and assistant chief of museum security and safety of the California Science Center, as designated by the executive director pursuant to Section 4108 of the Food and Agricultural Code, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 4108 of the Food and Agricultural Code.

(s) Employees of the Franchise Tax Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of the law as set forth in Chapter 9 (commencing with Section 19701) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(t) Notwithstanding any other provision of this section, a peace officer authorized by this section shall not be authorized to carry firearms by his or her employing agency until that agency has adopted a policy on the use of deadly force by those peace officers, and until those peace officers have been instructed in the employing agency's policy on the use of deadly force.

Every peace officer authorized pursuant to this section to carry firearms by his or her employing agency shall qualify in the use of the firearms at least every six months.

SEC. 8. Section 2.5 of this bill incorporates amendments to Section 1601 of the Business and Professions Code proposed by both this bill and AB 471. 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 1601 of the Business and Professions Code, and (3) this bill is enacted after AB 471, in which case Section 2 of this bill shall not become operative.

SEC. 9. Section 7 of this bill incorporates amendments to Section 830.3 of the Penal Code proposed by both this bill and SB 951. 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 830.3 of the Penal Code, and (3) this bill is enacted after SB 951, in which case Section 6 of this bill shall not become operative.

CHAPTER 705

An act to amend Sections 6710, 6714, 6747, and 8710 of the Business and Professions Code, relating to professional engineers.

[Approved by Governor October 5, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 6710 of the Business and Professions Code is amended to read:

6710. (a) There is in the Department of Consumer Affairs a State Board of Registration for Professional Engineers and Land Surveyors, which consists of 13 members.

(b) This section shall become inoperative on July 1, 2000, and, as of January 1, 2001, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2001, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section shall render the board subject to the review required by Division 1.2 (commencing with Section 473). However, the review of this board shall be limited to only those unresolved issues identified by the Joint Legislative Sunset Review Committee.

SEC. 2. Section 6714 of the Business and Professions Code is amended to read:

6714. The board shall appoint an executive officer at a salary to be fixed and determined by the board with the approval of the Director of Finance.

This section shall become inoperative on July 1, 2000, and, as of January 1, 2001, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2001, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 6747 of the Business and Professions Code is amended to read:

6747. (a) This chapter, except for those provisions that apply to civil engineers and civil engineering, shall not apply to the performance of engineering work by a manufacturing, mining, public utility, research and development, or other industrial corporation, or by employees of that corporation, provided that work is in connection with, or incidental to, the products, systems, or services of that corporation or its affiliates.

(b) For purposes of this section, "employees" also includes consultants, temporary employees, contract employees, and those persons hired pursuant to third-party contracts.

SEC. 4. Section 8710 of the Business and Professions Code is amended to read:

8710. The State Board of Registration for Professional Engineers and Land Surveyors is vested with power to administer the provisions and requirements of this chapter, and may make and enforce rules and regulations that are reasonably necessary to carry out its provisions.

This section shall become inoperative on July 1, 2000, and, as of January 1, 2001, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2001, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section shall render the board subject to the review required by Division 1.2 (commencing with Section 473). However, the review

of this board shall be limited to only those unresolved issues identified by the Joint Legislative Sunset Review Committee.

CHAPTER 706

An act to add Section 25201.15 to the Health and Safety Code, relating to hazardous waste.

[Approved by Governor October 5, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 25201.15 is added to the Health and Safety Code, to read:

25201.15. (a) For the purposes of this section, the following terms have the following meaning:

(1) "Biotechnology manufacturing or biotechnology process development activities" means activities conducted in SIC Code Subgroups 283, 2833, 2834, 2835, 2836, 8731, 8732, and 8733, including manufacturing and process development of medicinal chemicals and botanical products, pharmaceutical preparations, in vitro and in vivo diagnostic substances, and biological products, and all associated equipment and vessel cleaning and maintenance operations.

(2) "Biotechnology elementary neutralization activities" means the elementary neutralization of wastes generated by biotechnology manufacturing or biotechnology process development activities.

(3) "SIC Code" has the same meaning as defined in subdivision (t) of Section 25501.

(b) The Legislature hereby finds and declares that the biotechnology industry's elementary neutralization of hazardous wastes is a common, safe, and standard practice that typically occurs in a wastewater collection system, and which does not warrant extensive regulatory oversight.

(c) Biotechnology elementary neutralization activities are exempt from any requirement imposed pursuant to this chapter, including any regulation adopted pursuant to this chapter, that relates to generators, tanks, and tank systems, and the requirement to obtain a hazardous waste facilities permit or other grant of authorization from the department, except as otherwise provided in subdivision (d), if all of the following conditions are met:

(1) A permit is not required to conduct elementary neutralization under the federal act.

(2) The hazardous wastes are hazardous solely due to acidic or alkaline materials, and are generated by biotechnology process manufacturing or biotechnology process development activities.

(3) Either of the following applies with regard to the biotechnology elementary neutralization activity:

(A) The hazardous wastes in the elementary neutralization unit do not contain more than 10 percent by weight acid or alkaline constituents.

(B) The generator of the hazardous wastes determines that the elementary neutralization process will not raise the temperature of the hazardous wastes to within 10 degrees of the boiling point or cause the release of hazardous gaseous emissions, using either constituent-specific concentration limits or calculations. The generator shall make these calculations in accordance with the regulations adopted by the department, if the department adopts those regulations.

(4) The hazardous wastes are not diluted for the sole purpose of meeting the criteria specified in subparagraph (A) of paragraph (3) and after neutralization the wastewaters do not exhibit the characteristic of corrosivity, as defined in Section 66261.22 of Title 22 of the California Code of Regulations, or any successor regulation.

(5) The temperature of any unit 100 gallons or larger is automatically monitored, and is fitted with a high temperature alarm system, and for closed systems, the unit automatically controls the adding and mixing of corrosive and neutralizing solutions.

(d) The operator of an elementary neutralization unit exempt under this section shall comply with the following requirements:

(1) An operator of an elementary neutralization unit subject to this section shall successfully complete a program of classroom instruction or on-the-job training that includes, at a minimum, instruction for responding effectively to emergencies by familiarizing personnel with emergency procedures, emergency equipment, and emergency systems, including, where applicable, procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment, communications, or alarm systems.

(2) Within 10 days of commencing initial operation of the unit, or within any other time period that may be required by the CUPA, the operator shall notify the CUPA of the commencement of operation of the unit under the exemption made pursuant to this section. If the operator is not under the jurisdiction of a CUPA, the notice shall be sent to the officer of the agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (2) of subdivision (c) of Section 25404.

(e) Notwithstanding any other provision of law, unless required by federal law, biotechnology elementary neutralization activities satisfying the requirements of subdivisions (c) and (d) are exempt from any statute or any regulation adopted pursuant to state law requiring the elementary neutralization unit to have secondary containment for piping or ancillary equipment, including, but not

limited to, a regulation adopted by the State Water Resources Control Board, the department, or any other state agency.

CHAPTER 707

An act to add Section 53077.5 to the Government Code, and to amend Section 5353 of the Public Utilities Code, relating to youth groups.

[Approved by Governor October 5, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 53077.5 is added to the Government Code, to read:

53077.5. (a) For purposes of this section, the following terms have the following meaning:

(1) "Charge" means any fee or other impost, including, but not limited to, a financial requirement to pay a percentage of any revenues received for an organized activity held on, or involving the use of, a public beach or recreation area.

(2) "Group" means an assemblage of persons of unspecified age who share a singularity of purpose or affiliation that is manifested in joint activity, and who may be formally organized or may produce revenue from their activities.

(3) "Organized camp" has the same meaning as defined in Section 18897 of the Health and Safety Code.

(4) "Public beach or recreation area" means a beach area or an open-space recreational area that is owned or operated by a state or local agency.

(5) "Youth group" means an organization that serves youth 18 years of age or younger, including, but not limited to, the Boy Scouts, the Girl Scouts, the YMCA, Boys' and Girls' Clubs, 4H Programs, or any organization that operates an organized camp.

(b) No state or local agency shall adopt or enforce any ordinance, regulation, or other law that requires a youth group to pay a charge in excess of any charge that is imposed on a group composed of a similar number of persons for the use of, or for access to, a public beach or recreation area, or that requires a youth group to obtain a permit for that use or access unless such a group is also required to obtain a permit.

(c) This section shall not be construed to do either of the following:

(1) Prohibit a state or local agency from providing free or lower cost use of, or access to, a public beach or recreation area to any nonprofit group, school, or program operated by a governmental agency.

(2) Except as specified in subdivision (d), limit the ability of a state or local agency to restrict the use of, or access to, a public beach or recreation area if the restriction applies equally to all groups composed of the same number of persons.

(d) Nothing in this section prohibits the imposition of special fees imposed on groups requesting special services or facilities, or groups conducting activities beyond the normal scope of activities or operations at a public beach or recreation area.

SEC. 2. Section 5353 of the Public Utilities Code is amended to read:

5353. This chapter does not apply to any of the following:

(a) Transportation service rendered wholly within the corporate limits of a single city or city and county and licensed or regulated by ordinance.

(b) Transportation of school pupils conducted by or under contract with the governing board of any school district entered into pursuant to the Education Code.

(c) Common carrier transportation services between fixed termini or over a regular route which are subject to authorization pursuant to Article 2 (commencing with Section 1031) of Chapter 5 of Part 1 of Division 1.

(d) Transportation services occasionally afforded for farm employees moving to and from farms on which employed when the transportation is performed by the employer in an owned or leased vehicle, or by a nonprofit agricultural cooperative association organized and acting within the scope of its powers under Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code, and without any requirement for the payment of compensation therefor by the employees.

(e) Transportation service rendered by a publicly owned transit system.

(f) Passenger vehicles carrying passengers on a noncommercial enterprise basis.

(g) Taxicab transportation service licensed and regulated by a city or county, by ordinance or resolution, rendered in vehicles designed for carrying not more than eight persons excluding the driver.

(h) Transportation of persons between home and work locations or of persons having a common work-related trip purpose in a vehicle having a seating capacity of 15 passengers or less, including the driver, which are used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code, when the ridesharing is incidental to another purpose of the driver. This exemption also applies to a vehicle having a seating capacity of more than 15 passengers if the driver files with the commission evidence of liability insurance protection in the same amount and in the same manner as required for a passenger stage corporation, and the vehicle undergoes and passes an annual safety inspection by the Department of the California Highway Patrol. The insurance filing shall be

accompanied by a one-time filing fee of seventy-five dollars ($75). This exemption does not apply if the primary purpose for the transportation of those persons is to make a profit. "Profit," as used in this subdivision, does not include the recovery of the actual costs incurred in owning and operating a vanpool vehicle, as defined in Section 668 of the Vehicle Code.

(i) Medical transportation vehicles, including vehicles employed to transport developmentally disabled persons for regional centers established pursuant to Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code.

(j) Transportation services rendered solely within the Lake Tahoe Basin, comprising that area included within the Tahoe Regional Planning Compact as set forth in Section 66801 of the Government Code, when the operator of the services has obtained any permit required from the Tahoe Basin Transportation Authority or the City of South Lake Tahoe, or both.

(k) Subject to Section 34507.6 of the Vehicle Code, transportation service provided by the operator of an automobile rental business in vehicles owned or leased by that operator, without charge other than as may be included in the automobile rental charges, to carry its customers to or from its office or facility where rental vehicles are furnished or returned after the rental period.

(*l*) Subject to Section 34507.6 of the Vehicle Code, transportation service provided by the operator of a hotel, motel, or other place of temporary lodging in vehicles owned or leased by that operator, without charge other than as may be included in the charges for lodging, between the lodging facility and an air, rail, water, or bus passenger terminal or between the lodging facility and any place of entertainment or commercial attraction, including, but not limited to, facilities providing snow skiing. Nothing in this subdivision authorizes the operator of a hotel, motel, or other place of temporary lodging to provide any round-trip sightseeing service without a permit, as required by subdivision (c) of Section 5384.

(m) (1) Transportation of hot air balloon ride passengers in a balloon chase vehicle from the balloon landing site back to the original take-off site, provided that the balloon ride was conducted by a balloonist who meets all of the following conditions:

(A) Does not fly more than a total of 30 passenger rides for compensation annually.

(B) Does not provide any preflight ground transportation services in their vehicles.

(C) In providing return transportation to the launch site from landing does not drive more than 300 miles annually.

(D) Files with the commission an exemption declaration and proof of vehicle insurance, as prescribed by the commission, certifying that the operator qualifies for the exemption and will maintain minimum insurance on each vehicle of one hundred thousand dollars ($100,000) for injury or death of one person, three

hundred thousand dollars ($300,000) for injury or death of two or more persons and one hundred thousand dollars ($100,000) for damage to property.

(2) Nothing in this subdivision authorizes the operator of a commercial balloon operation to provide any round-trip sightseeing service without a permit, as required by subdivision (c) of Section 5384.

(n) (1) Transportation services incidental to operation of a youth camp that are provided by either a nonprofit organization that qualifies for tax exemption under Section 501(c)(3) of the Internal Revenue Code or an organization that operates an organized camp, as defined in Section 18897 of the Health and Safety Code, serving youth 18 years of age or younger.

(2) Any transportation service described in paragraph (1) shall comply with all of the following requirements:

(A) Register as a private carrier with the commission pursuant to Section 4005.

(B) Participate in a pull notice system for employers of drivers as prescribed in Section 1808.1 of the Vehicle Code.

(C) Ensure compliance with the annual bus terminal inspection required by subdivision (c) of Section 34501 of the Vehicle Code.

(D) Obtain the following minimum amounts of general liability insurance coverage for vehicles that are used to transport youth:

(i) A minimum of five hundred thousand dollars ($500,000) general liability insurance coverage for passenger vehicles designed to carry up to eight passengers. For organized camps, as defined in Section 18897 of the Health and Safety Code, an additional two hundred fifty thousand dollars ($250,000) general umbrella policy that covers vehicles.

(ii) A minimum of one million dollars ($1,000,000) general liability insurance coverage for vehicles designed to carry up to 15 passengers. For organized camps, as defined in Section 18897 of the Health and Safety Code, an additional five hundred thousand dollars ($500,000) general umbrella policy that covers vehicles.

(iii) A minimum of one million five hundred thousand dollars ($1,500,000) general liability insurance coverage for vehicles designed to carry more than 15 passengers, and an additional three million five hundred thousand dollars ($3,500,000) general umbrella liability insurance policy that covers vehicles.

CHAPTER 708

An act to amend Section 46201 of the Education Code, relating to school finance.

[Approved by Governor October 5, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 46201 of the Education Code is amended to read:

46201. (a) In each of the 1984–85, 1985–86, and 1986–87 fiscal years, for each school district that certifies to the Superintendent of Public Instruction that it offers at least the amount of instructional time specified in this subdivision at a grade level or levels, the Superintendent of Public Instruction shall determine an amount equal to twenty dollars ($20) per unit of current year second principal apportionment regular average daily attendance in kindergarten and grades 1 to 8, inclusive, and forty dollars ($40) per unit of current year second principal apportionment regular average daily attendance in grades 9 to 12, inclusive. This section shall not apply to adult average daily attendance, the average daily attendance for pupils attending summer school, alternative school, regional occupational centers and programs, continuation high schools, or opportunity schools, and the attendance of pupils while participating in community college or independent study programs.

(1) In the 1984–85 fiscal year, for kindergarten and each of grades 1 to 12, inclusive, the sum of subparagraphs (A) and (B):

(A) The number of instructional minutes offered at that grade level in the 1982–83 fiscal year.

(B) One-third of the difference between the number of minutes specified for that grade level in paragraph (3) and the number of instructional minutes offered at that grade level in the 1982–83 fiscal year.

(2) In the 1985–86 fiscal year, for kindergarten and each of grades 1 to 12, inclusive, the sum of subparagraphs (A) and (B):

(A) The number of instructional minutes offered at that grade level in the 1982–83 fiscal year.

(B) Two-thirds of the difference between the number of minutes specified for that grade level in paragraph (3) and the number of instructional minutes offered at that grade level in the 1982–83 fiscal year.

(3) In the 1986–87 fiscal year:

(A) Thirty-six thousand minutes in kindergarten.

(B) Fifty thousand four hundred minutes in grades 1 to 3, inclusive.

(C) Fifty-four thousand minutes in grades 4 to 8, inclusive.

(D) Sixty-four thousand eight hundred minutes in grades 9 to 12, inclusive.

(4) In any fiscal year, each school district that receives an apportionment pursuant to subdivision (a) for average daily attendance in grades 9 to 12, inclusive, shall offer a program of instruction that allows each student to receive at least 24 course years of instruction, or the equivalent, during grades 9 to 12, inclusive.

(5) For any schoolsite at which programs are operated in more than one of the grade levels enumerated in subparagraph (B) or (C) of paragraph (3), the school district may calculate a weighted average of minutes for those grade levels at that schoolsite for purposes of making the certification authorized by this subdivision.

(b) (1) If any of the amounts of instructional time specified in paragraph (3) of subdivision (a) is a lesser number of minutes for that grade level than actually provided by the district in the same grade in the 1982–83 fiscal year, the 1982–83 fiscal year number of minutes for that grade level, adjusted to comply with Section 46111, shall instead be the requirement for the purposes of paragraphs (1), (2), and (3) of subdivision (a). Commencing with the 1990–91 fiscal year, and each fiscal year through the 1995–96 fiscal year, any school district subject to this subdivision that does not maintain the number of instructional minutes for a particular grade level that the school district maintained for the 1982–83 fiscal year, adjusted to comply with Section 46111, shall not be subject to paragraphs (1) to (3), inclusive, of subdivision (c) if that school district maintains at least the minimum number of instructional minutes for each grade level set forth in paragraph (3) of subdivision (a) in the 1990–91 fiscal year and each fiscal year through the 1994–95 fiscal year or the 1995–96 fiscal year for districts whose instructional minutes were adjusted to comply with Section 46111, and thereafter returns to the number of instructional minutes maintained for each grade level in the 1982–83 fiscal year.

(2) The Legislature finds and declares that the school districts to which paragraph (1) is applicable have not offered any less instructional time than is required of all other school districts and therefore should not be forced to pay any penalty.

(c) (1) For any school district that receives an apportionment pursuant to subdivision (a) in the 1984–85 fiscal year and that reduces the amount of instructional time offered below the minimum amounts specified in paragraph (1) of subdivision (a) in the 1985–86 fiscal year or any fiscal year thereafter, the Superintendent of Public Instruction shall reduce the base revenue limit per unit of average daily attendance for the fiscal year in which the reduction occurs by an amount attributable to the increase in the 1985–86 fiscal year base revenue limit per unit of average daily attendance pursuant to paragraph (4) of subdivision (b) of Section 42238, as adjusted in the 1985–86 fiscal year and fiscal years thereafter.

(2) For each school district that receives an apportionment pursuant to subdivision (a) in the 1985–86 fiscal year and that reduces the amount of instructional time offered below the minimum amounts specified in paragraph (2) of subdivision (a) in the 1986–87 fiscal year or any fiscal year thereafter, the Superintendent of Public Instruction shall reduce the base revenue limit per unit of average daily attendance for the fiscal year in which the reduction occurs by an amount attributable to the increase in the 1986–87 fiscal year base

revenue limit per unit of average daily attendance pursuant to paragraph (4) of subdivision (b) of Section 42238, as adjusted in the 1986–87 fiscal year and fiscal years thereafter.

(3) For each school district that receives an apportionment pursuant to subdivision (a) in the 1986–87 fiscal year and that reduces the amount of instructional time offered below the minimum amounts specified in paragraph (3) of subdivision (a) in the 1987–88 fiscal year or any fiscal year thereafter, the Superintendent of Public Instruction shall reduce the base revenue limit per unit of average daily attendance for the fiscal year in which the reduction occurs by an amount attributable to the increase in the 1987–88 fiscal year base revenue limit per unit of average daily attendance pursuant to paragraph (4) of subdivision (b) of Section 42238, as adjusted in the 1987–88 fiscal year and fiscal years thereafter.

SEC. 2. (a) It is the intent of the Legislature that, commencing with the 1990–91 fiscal year and each fiscal year through the 1995–96 fiscal year, for any school district that is subject to subdivision (b) of Section 46201 of the Education Code and that failed to maintain the number of instructional minutes for each grade level that the school district maintained for the 1982–83 fiscal year, as adjusted to comply with Section 46111, but that provided, at a minimum, the number of instructional minutes for each grade level set forth in paragraph (3) of subdivision (a) of Section 46201 of the Education Code, that school district shall not have its base revenue limits for any of those fiscal years reduced as a result of that failure.

(b) The Superintendent of Public Instruction shall take any steps necessary, including, but not limited to, adjustments to the base revenue limit of any school district described in subdivision (a) for any of the 1990–91, 1991–92, 1992–93, 1993–94, or 1994–95 fiscal years, or the 1995–96 fiscal year for districts whose instructional minutes were adjusted to comply with Section 46111, to ensure that any school district described in subdivision (a) does not have its base revenue limit reduced in the 1990–91 fiscal year, or any fiscal year through 1994–95, or the 1995–96 fiscal year for districts whose instructional minutes were adjusted to comply with Section 46111, for failing to maintain the number of instructional minutes for any grade level that it maintained in the 1982–83 fiscal year so long as the school district maintained, at a minimum, the number of instructional minutes for each grade level set forth in paragraph (3) of subdivision (a) of Section 46201, and in the 1995–96 fiscal year, or the 1996–97 fiscal year for districts whose instructional minutes were adjusted to comply with Section 46111, returns to the number of instructional minutes maintained for each grade level in the 1982–83 fiscal year.

SEC. 3. (a) Notwithstanding Sections 46201, 46202, and 46206 of the Education Code, the school districts identified in subdivision (b) which failed to maintain the level of instructional minutes required in paragraph (3) of subdivision (a) of Section 46201 of the Education Code in any of the fiscal years 1990–91 to 1994–95, inclusive, or with

respect to the Ferndale Unified School District, the fiscal years 1990–91 to 1995–96, inclusive, and subject to fiscal penalties resulting from audits of instructional minutes, shall pay the lessor of one-quarter of the required fiscal assessment or 5 percent of the total revenue limit of the district commencing with the1997–98 fiscal year and continuing until the full amount of the required fiscal assessment is paid. The Superintendent of Public Instruction shall make the necessary adjustments to facilitate withholding the appropriate amounts from each school district's apportionments.

(b) The following school districts are subject to subdivision (a):

(1) Butte Valley Unified School District.

(2) Calaveras Unified School District.

(3) Etna Union High School District.

(4) Ferndale Unified School District.

(5) Fort Sage Unified School District.

(6) Graves Elementary School District.

(7) Los Angeles Unified School District.

(8) Parlier Unified School District.

(9) Siskiyou Union High School District.

(c) In addition to the amount specified in subdivision (a), the Graves Elementary School District shall have one-half the amount specified in subdivision (b) of Section 41420 of the Education Code withheld from its apportionments on the same terms as specified in subdivision (a), if the district failed to comply with the 175-day minimum school year in any school year described in subdivision (a).

SEC. 4. The Legislature finds and declares that, due to the unique circumstances that would cause financial hardship for the Butte Valley Unified School District, Calaveras Unified School District, Etna Union High School District, Ferndale Unified School District, Fieldbrook Elementary School District, Fort Sage Unified School District, Graves Elementary School District, La Honda Pescadero Unified School District, Los Angeles Unified School District, Parlier Unified School District, Santa Ana Unified School District, and Siskiyou Union High School District, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

CHAPTER 709

An act amend Section 97 of the Streets and Highways Code, and to amend Section 42010 of the Vehicle Code, relating to highways, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. This act is dedicated in the memory of Helen Madere, who as Vice Mayor of the City of Rio Vista and President of the Highway 12 Association, was a tireless advocate on highway safety issues and a driving force behind the establishment of a Safety Enhancement-Double Fine Zone for State Highway Route 12.

SEC. 2. Section 97 of the Streets and Highways Code is amended to read:

97. (a) The department, in consultation with the Department of the California Highway Patrol, shall develop five pilot projects, three in northern California and two in southern California. The portions of the highways involved in the projects shall be designated and identified as "Safety Enhancement-Double Fine Zones" and shall be in the following locations:

(1) On Route 37, between the intersection with Route 121 and the intersection with Route 29.

(2) On Route 4, between the intersection with the Cummings Skyway and the intersection with Route 80.

(3) On Route 74, between the intersection with Route 5 and the intersection with the Riverside-Orange County line.

(4) On Route 46, between the intersection with Route 101 and the junction with Route 41.

(5) On the Golden Gate Bridge.

(6) On Route 12, between the intersection with Walters Road in the City of Suisun and the intersection with Lower Sacramento Road in the City of Lodi.

(b) (1) The department shall adopt rules and regulations prescribing uniform standards for warning signs to notify motorists that, pursuant to Section 42010 of the Vehicle Code, increased penalties apply for traffic violations that are committed within Safety Enhancement-Double Fine Zones. The rules and regulations adopted by the department shall include, but not be limited to, a requirement that Safety Enhancement-Double Fine Zones be identified with signs stating: "Special Driving Zone Begins Here" and "Special Driving Zone Ends Here."

(2) The department or local authorities, with respect to highways under their respective jurisdictions, shall place and maintain the warning signs specified in paragraph (1) in areas designated under subdivision (a).

(3) The department shall report to the Legislature on January 1, 1998, on the results of these pilot projects, including a determination of whether the projects were successful. In its report, the department shall provide a detailed analysis on the impact of the pilot projects on highway safety, including, but not limited to, the number of accidents, traffic injuries, and fatalities in the project areas. A determination that the projects were successful shall be based upon a showing that a statistically significant decrease in the number of

accidents, traffic injuries, and fatalities has occurred in the project areas.

(c) Designation of a highway as a Safety Enhancement-Double Fine Zone does not increase the civil liability of the state under Division 3.6 (commencing with Section 810) of Title 1 of the Government Code or any other provision of law relating to civil liability.

(d) (1) Only the base fine shall be enhanced pursuant to this section.

(2) Notwithstanding any other provision of law, any additional penalty, forfeiture, or assessment imposed by any other statute shall be based on the amount of the base fine before enhancement or doubling and shall not be based on the amount of the enhanced fine imposed pursuant to this section.

(e) The pilot projects specified in subdivision (a) shall not be elevated in priority for state funding purposes.

(f) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 2000, deletes or extends that date.

SEC. 3. Section 42010 of the Vehicle Code is amended to read:

42010. (a) For any offense specified in subdivision (b) that is committed by the driver of a vehicle within an area that has been designated as a Safety Enhancement-Double Fine Zone pursuant to subdivision (a) of Section 97 of the Streets and Highways Code, the fine, in a misdemeanor case, shall be double the amount otherwise prescribed, and, in an infraction case, the fine shall be one category higher than the penalty otherwise prescribed by the uniform traffic penalty schedule established pursuant to Section 40310.

(b) A violation of any of the following provisions is an offense that is subject to subdivision (a):

(1) Chapter 3 (commencing with Section 21650) of Division 11, relating to driving, overtaking, and passing.

(2) Chapter 7 (commencing with Section 22348) of Division 11, relating to speed limits.

(3) Section 23103, relating to reckless driving.

(4) Section 23104, relating to reckless driving which results in bodily injury to another.

(5) Section 23109, relating to speed contests.

(6) Section 23152, relating to driving under the influence of alcohol or a controlled substance, or a violation of Section 23103, as specified in Section 23103.5, relating to alcohol-related reckless driving.

(7) Section 23153, relating to driving under the influence of alcohol or a controlled substance, which results in bodily injury to another.

(8) Section 23220, relating to drinking while driving.

(9) Section 23221, relating to drinking in a motor vehicle while on the highway.

(10) Section 23222, relating to driving while possessing an open alcoholic beverage container.

(11) Section 23223, relating to being in a vehicle on the highway while possessing an open alcoholic beverage container.

(12) Section 23224, relating to being a driver or passenger under the age of 21 possessing an open alcoholic beverage container.

(13) Section 23225, relating to being the owner or driver of a vehicle in which there is an open alcoholic beverage container.

(14) Section 23226, relating to being a passenger in a vehicle in which there is an open alcoholic beverage container.

(c) This section applies only when traffic controls or warning signs have been placed pursuant to Section 97 of the Streets and Highways Code.

(d) (1) Notwithstanding any other provision of law, the enhanced fine imposed pursuant to this section shall be based only on the base fine imposed for the underlying offense and shall not include any other enhancements imposed pursuant to law.

(2) Notwithstanding any other provision of law, any additional penalty, forfeiture, or assessment imposed by any other statute shall be based on the amount of the base fine before enhancement or doubling and shall not be based on the amount of the enhanced fine imposed pursuant to this section.

(e) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 2000, deletes or extends that date.

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

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

SEC. 5. This act 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, at the earliest possible time, that public safety is protected by enhancing the fines on sections of the highway that pose particularly hazardous conditions for unsafe drivers, it is necessary that this act take effect immediately.

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CHAPTER 710

An act to amend Section 27803 of, and to add Sections 21714, 27315.1, and 27368 to, the Vehicle Code, relating to vehicles.

[Approved by Governor October 5, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 21714 is added to the Vehicle Code, to read:

21714. The driver of a vehicle described in subdivision (f) of Section 27803 shall not do either of the following:

(a) Operate the vehicle in any lane established under Section 21655.5 as an exclusive or preferential use lane for high-occupancy vehicles.

(b) Operate the vehicle in either of the following:

(1) The area on, or immediately adjacent to, the striping or other markers designating adjacent traffic lanes.

(2) The area between two or more vehicles that are traveling in adjacent traffic lanes.

SEC. 2. Section 27315.1 is added to the Vehicle Code, to read:

27315.1. Section 27315 applies to any person in a fully enclosed three-wheeled motor vehicle that is not less than seven feet in length and not less than four feet in width, and has an unladen weight of 900 pounds or more.

SEC. 3. Section 27368 is added to the Vehicle Code, to read:

27368. This article applies to child passengers in a fully enclosed three-wheeled motor vehicle that is not less than seven feet in length and not less than four feet in width, and has an unladen weight of 900 pounds or more.

SEC. 4. Section 27803 of the Vehicle Code is amended to read:

27803. (a) A driver and any passenger shall wear a safety helmet meeting requirements established pursuant to Section 27802 when riding on a motorcycle, motor-driven cycle, or motorized bicycle.

(b) It is unlawful to operate a motorcycle, motor-driven cycle, or motorized bicycle if the driver or any passenger is not wearing a safety helmet as required by subdivision (a).

(c) It is unlawful to ride as a passenger on a motorcycle, motor-driven cycles, or motorized bicycle if the driver or any passenger is not wearing a safety helmet as required by subdivision (a).

(d) This section applies to persons who are riding on motorcycles, motor-driven cycles, or motorized bicycles operated on the highways.

(e) For the purposes of this section, "wear a safety helmet" or "wearing a safety helmet" means having a safety helmet meeting the requirements of Section 27802 on the person's head that is fastened

with the helmet straps and that is of a size that fits the wearing person's head securely without excessive lateral or vertical movement.

(f) This section does not apply to a person operating, or riding as a passenger in, a fully enclosed three-wheeled motor vehicle that is not less than seven feet in length and not less than four feet in width, and has an unladen weight of 900 pounds or more, if the vehicle meets or exceeds all of the requirements of this code, the Federal Motor Vehicle Safety Standards, and the rules and regulations adopted by the United States Department of Transportation and the National Highway Traffic Safety Administration.

(g) In enacting this section, it is the intent of the Legislature to ensure that all persons are provided with an additional safety benefit while operating or riding a motorcycle, motor-driven cycle, or motorized bicycle.

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 711

An act to repeal and add Section 12606 of the Business and Professions Code, and repeal and add Section 110375 of the Health and Safety Code, relating to packaging and labeling.

[Approved by Governor October 5, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 12606 of the Business and Professions Code is repealed.

SEC. 2. Section 12606 is added to the Business and Professions Code, to read:

12606. (a) No container wherein commodities are packed shall have a false bottom, false sidewalls, false lid or covering, or be otherwise so constructed or filled, wholly or partially, as to facilitate the perpetration of deception or fraud.

(b) No container shall be made, formed, or filled as to be misleading. A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack fill. Slack fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack fill is the empty space in a package that is filled to less than its capacity for reasons other than the following:

(1) Protection of the contents of the package.

(2) The requirements of machines used for enclosing the contents of the package.

(3) Unavoidable product settling during shipping and handling.

(4) The need to utilize a larger than required package or container to provide adequate space for the legible presentation of mandatory and necessary labeling information, such as those based on the regulations adopted by the Food and Drug Administration or state or federal agencies under federal or state law, laws or regulations adopted by foreign governments, or under an industrywide voluntary labeling program.

(5) The fact that the product consists of a commodity that is packaged in a decorative or representational container where the container is part of the presentation of the product and has value that is both significant in proportion to the value of the product and independent of its function to hold the product, such as a gift combined with a container that is intended for further use after the product is consumed, or durable commemorative or promotional packages.

(6) An inability to increase the level of fill or to further reduce the size of the package, such as where some minimum package size is necessary to accommodate required labeling, discourage pilfering, facilitate handling, or accommodate tamper-resistant devices.

(7) The product container bears a reasonable relationship to the actual amount of product contained inside, and the dimensions of the actual product container, the product, or the amount of product therein is visible to the consumer at the point of sale, or where obvious secondary use packaging is involved.

(8) The dimensions of the product or immediate product container are visible through the exterior packaging, or where the actual size of the product or immediate product container is clearly and conspicuously depicted on the exterior packaging, accompanied by a clear and conspicuous disclosure that the representation is the "actual size" of the product or the immediate product container.

(9) The presence of any head space within an immediate product container necessary to facilitate the mixing, adding, shaking, or dispensing of liquids or powders by consumers prior to use.

(10) The exterior packaging contains a product delivery or dosing device if the device is visible, or a clear and conspicuous depiction of the device appears on the exterior packaging, or it is readily apparent

from the conspicuous exterior disclosures or the nature and name of the product that a delivery or dosing device is contained in the package.

(11) The exterior packaging or immediate product container is a kit that consists of a system, or multiple components, designed to produce a particular result that is not dependent upon the quantity of the contents, if the purpose of the kit is clearly and conspicuously disclosed on the exterior packaging.

(12) The exterior packaging of the product is routinely displayed using tester units or demonstrations to consumers in retail stores, so that customers can see the actual, immediate container of the product being sold, or a depiction of the actual size thereof prior to purchase.

(13) The exterior packaging consists of single or multi-unit presentation boxes of holiday or gift packages if the purchaser can adequately determine the quantity and sizes of the immediate product container at the point of sale.

(14) The exterior packaging is for a combination of one purchased product, together with a free sample or gift, wherein the exterior packaging is necessarily larger than it would otherwise be due to the inclusion of the sample or gift, if the presence of both products and the quantity of each product are clearly and conspicuously disclosed on the exterior packaging.

(15) The exterior packaging or immediate product container encloses computer hardware or software designed to serve a particular computer function, if the particular computer function to be performed by the computer hardware or software is clearly and conspicuously disclosed on the exterior packaging.

(c) Any sealer may seize a container that facilitates the perpetration of deception or fraud and the contents of the container. By order of the municipal or superior court of the city or county within which a violation of this section occurs, the containers seized shall be condemned and destroyed or released upon such conditions as the court may impose to insure against their use in violation of this chapter. The contents of any condemned container shall be returned to the owner thereof if the owner furnishes proper facilities for the return.

SEC. 3. Section 110375 of the Health and Safety Code is repealed.

SEC. 4. Section 110375 is added to the Health and Safety Code, to read:

110375. (a) No container wherein commodities are packed shall have a false bottom, false sidewalls, false lid or covering, or be otherwise so constructed or filled, wholly or partially, as to facilitate the perpetration of deception or fraud.

(b) No container shall be made, formed, or filled as to be misleading. A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack fill. Slack fill is the difference

between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack fill is the empty space in a package that is filled to less than its capacity for reasons other than the following:

(1) Protection of the contents of the package.

(2) The requirements of machines used for enclosing the contents of the package.

(3) Unavoidable product settling during shipping and handling.

(4) The need to utilize a larger than required package or container to provide adequate space for the legible presentation of mandatory and necessary labeling information, such as those based on the regulations adopted by the Food and Drug Administration or state or federal agencies under federal or state law, laws or regulations adopted by foreign governments, or under an industrywide voluntary labeling program.

(5) The fact that the product consists of a commodity that is packaged in a decorative or representational container where the container is part of the presentation of the product and has value that is both significant in proportion to the value of the product and independent of its function to hold the product, such as a gift combined with a container that is intended for further use after the product is consumed, or durable commemorative or promotional packages.

(6) An inability to increase the level of fill or to further reduce the size of the package, such as where some minimum package size is necessary to accommodate required labeling, discourage pilfering, facilitate handling, or accommodate tamper-resistant devices.

(7) The product container bears a reasonable relationship to the actual amount of product contained inside, and the dimensions of the actual product container, the product, or the amount of product therein is visible to the consumer at the point of sale, or where obvious secondary use packaging is involved.

(8) The dimensions of the product or immediate product container are visible through the exterior packaging, or where the actual size of the product or immediate product container is clearly and conspicuously depicted on the exterior packaging, accompanied by a clear and conspicuous disclosure that the representation is the "actual size" of the product or the immediate product container.

(9) The presence of any head space within an immediate product container necessary to facilitate the mixing, adding, shaking, or dispensing of liquids or powders by consumers prior to use.

(10) The exterior packaging contains a product delivery or dosing device if the device is visible, or a clear and conspicuous depiction of the device appears on the exterior packaging, or it is readily apparent from the conspicuous exterior disclosures or the nature and name of the product that a delivery or dosing device is contained in the package.

(11) The exterior packaging or immediate product container is a kit that consists of a system, or multiple components, designed to produce a particular result that is not dependent upon the quantity of the contents, if the purpose of the kit is clearly and conspicuously disclosed on the exterior packaging.

(12) The exterior packaging of the product is routinely displayed using tester units or demonstrations to consumers in retail stores, so that customers can see the actual, immediate container of the product being sold, or a depiction of the actual size thereof prior to purchase.

(13) The exterior packaging consists of single or multi-unit presentation boxes of holiday or gift packages if the purchaser can adequately determine the quantity and sizes of the immediate product container at the point of sale.

(14) The exterior packaging is for a combination of one purchased product, together with a free sample or gift, wherein the exterior packaging is necessarily larger than it would otherwise be due to the inclusion of the sample or gift, if the presence of both products and the quantity of each product are clearly and conspicuously disclosed on the exterior packaging.

(c) Any sealer may seize a container that facilitates the perpetration of deception or fraud and the contents of the container. By order of the municipal or superior court of the city or county within which a violation of this section occurs, the containers seized shall be condemned and destroyed or released upon such conditions as the court may impose to insure against their use in violation of this chapter. The contents of any condemned container shall be returned to the owner thereof if the owner furnishes proper facilities for the return.

SEC. 5. 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 712

An act to add Chapter 2.93 (commencing with Section 7286.52) to Part 1.7 of Division 2 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 5, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Chapter 2.93 (commencing with Section 7286.52) is added to Part 1.7 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 2.93. WOODLAND TRANSACTIONS AND USE TAX

7286.52. (a) Subject to subdivision (b), the City of Woodland may levy a transactions and use tax at a rate of 0.25 percent or 0.5 percent, if an ordinance or resolution proposing that tax is approved by a two-thirds vote of all the members of the city council and the tax is approved by a majority vote of the qualified voters of the city voting in an election on the issue.

(b) Any transactions and use tax levied under this section shall be levied pursuant to the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)).

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the uniquely difficult fiscal pressures being experienced by the City of Woodland in providing essential services and funding for city programs and operations.

CHAPTER 713

An act to amend Section 39612 of the Health and Safety Code, relating to air pollution.

[Approved by Governor October 5, 1997. Filed with Secretary of State October 6, 1997.]

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

SECTION 1. Section 39612 of the Health and Safety Code is amended to read:

39612. (a) In addition to funds that may be appropriated by the Legislature to the state board to carry out the additional responsibilities and to undertake necessary technical studies required by this chapter, the state board, beginning July 1, 1989, may require districts to impose additional permit fees on nonvehicular sources within their jurisdiction.

(b) The permit fees imposed pursuant to this section shall be expended only for the purposes of recovering costs of additional state programs related to nonvehicular sources. Priority for expenditure of permit fees collected pursuant to this section shall be given to all of the following activities:

(1) Identifying air quality-related indicators that may be used to measure or estimate progress in the attainment of state ambient air standards pursuant to subdivision (f) of Section 39607.

(2) Establishing a uniform methodology for assessing population exposure to air pollutants pursuant to subdivision (g) of Section 39607.

(3) Updating the emission inventory pursuant to Section 39607.3, including emissions that cause or contribute to the nonattainment of federal ambient air standards.

(4) Identifying, assessing, and establishing the mitigation requirements for the effects of interbasin transport of air pollutants pursuant to Section 39610.

(5) Updating the state board's guidance to districts on ranking control measures for stationary sources based upon the cost effectiveness of those measures in reducing air pollution.

(c) The permit fees imposed pursuant to this section shall be collected from nonvehicular sources that are authorized by district permits to emit 500 tons or more per year of any nonattainment pollutant or its precursors.

(d) The permit fees collected by a district pursuant to this section, after deducting the administrative costs to the district of collecting the fees, shall be transmitted to the Controller for deposit in the Air Pollution Control Fund.

(e) The total amount of funds collected by fees imposed pursuant to this section, exclusive of district administrative costs, shall not exceed three million dollars ($3,000,000) in any fiscal year.

(f) On or before January 1 of each year, the state board shall report to the Governor and the Legislature on the expenditure of permit fees collected pursuant to this section. The report shall include all of the following:

(1) For the initial report prepared for the 1997–98 fiscal year, a detailed workplan that describes the expenditures the state board

will make from permit fees collected pursuant to this section for that fiscal year.

(2) A report on the status of implementation of the programs prioritized for funding pursuant to subdivision (b).

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

CHAPTER 714

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 October 5, 1997. Filed with Secretary of State October 6, 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, 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:

In order to address as soon as possible concerns about the increasing use and serious side affects of the sedative and hypnotic drug gamma-hydroxybutyrate, it is necessary that this bill go into immediate effect.

CHAPTER 715

An act to add Section 50802.1 to the Health and Safety Code, relating to homeless shelters, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 6, 1997. Filed with
Secretary of State October 7, 1997.]

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

SECTION 1. Section 50802.1 is added to the Health and Safety Code, to read:

50802.1. (a) The sum of eight hundred ten thousand dollars ($810,000) from the Emergency Housing and Assistance Fund shall be made available to the following counties in the following allotments during the 1997–98 and 1998–99 fiscal years:

(1) For the Counties of Imperial, Merced, San Mateo, Shasta, Sonoma, and Ventura, the department shall allocate thirty thousand dollars ($30,000) to each county.

(2) For the Counties of Orange, Riverside, San Diego, Santa Barbara, and Santa Cruz, the department shall allocate sixty thousand dollars ($60,000) to each county.

(3) For the County of Santa Clara, the department shall allocate ninety thousand dollars ($90,000).

(4) For the County of Los Angeles, the department shall allocate two hundred forty thousand dollars ($240,000).

(b) A designated local board or a county shall be eligible for its specified allotment by submitting to the department a one page application requesting the funding. The application shall briefly state how the county's proposed use of the funds is consistent with Section 50803 and shall designate the grant recipient or recipients for the funds.

(c) The department shall disburse the specified allotments to the grant recipient or recipients no later than 30 days after receipt of the application, if the department determines that the application is consistent with subdivision (b).

(d) The department shall allocate these additional Emergency Housing and Assistance Program funds above the base year amount consistent with Section 50802, except that no county that received a specified allotment under subdivision (a) shall be eligible for any additional Emergency Housing and Assistance Program funds.

(e) The department's administrative costs shall not exceed the amount provided for in subdivision (d) of Section 50802.

SEC. 2. The sum of one million sixty-two thousand, three hundred sixty dollars ($1,062,360) is hereby appropriated from the General Fund to the State Controller for allocation and disbursement to the Emergency Housing and Assistance Fund to be spent for programs authorized by Chapter 11.5 (commencing with Section 50800) of Part 2 of Division 31 of the Health and Safety Code, and the Department of Housing and Community Development shall disburse the funds pursuant to Section 50802.1.

SEC. 3. This act shall become operative only if Senate Bill 255 and Assembly Bill 67 of the 1997–98 Regular Session are enacted and

become operative. This act shall be operative on the date that either Senate Bill 255 or Assembly Bill 67 becomes operative, whichever occurs last, or the date that this act becomes effective, if that date is last.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide adequate shelter for the homeless, it is necessary that this act take effect immediately.

CHAPTER 716

An act to amend Section 15301 of, to add Section 15301.6 to, to repeal Section 15301.7 of, and to repeal and add Section 15301.5 of, the Government Code, relating to armories, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 6, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 15301 of the Government Code is amended to read:

15301. (a) The El Centro armory in Imperial County; the Culver City, Glendale, Inglewood, Long Beach on 7th Street, Pomona, and Sylmar armories and the West Los Angeles armory on Federal Avenue in Los Angeles County; the Merced armory in Merced County; the Fullerton and Santa Ana armories in Orange County; the Indio and Riverside armories in Riverside County; the Escondido and Vista armories in San Diego County; the San Mateo armory in San Mateo County; the Santa Barbara and Santa Maria armories in Santa Barbara County; the Gilroy and Sunnyvale armories and the San Jose armory on Hedding Street in Santa Clara County; the Santa Cruz and Watsonville armories in Santa Cruz County; the Redding armory in Shasta County; the Petaluma and Santa Rosa armories in Sonoma County; and the Oxnard armory in Ventura County shall be made available to these counties or any city in these counties for the purpose of providing temporary shelter for homeless persons during the period from December 1 through March 15 each year, as a temporary measure until March 15, 1999, to allow adequate time for government entities in these counties to develop other suitable homeless shelter arrangements. If severe weather conditions exist between November 1 through March 31, the Military Department may extend the use of the armories to include November 1 to December 1 and March 15 to March 31.

(b) If the communities in Calexico, Chico, Corona, El Cajon, Roseville, or San Rafael require the use of the armories in those communities as emergency shelters, the county or city may request use of the armories through the Office of Emergency Services, if the county or city has exhausted all other available resources for housing homeless persons.

SEC. 2. Section 15301.5 of the Government Code is repealed.

SEC. 3. Section 15301.5 is added to the Government Code, to read:

15301.5. County governments utilizing the Armory Temporary Emergency Shelter Program pursuant to this chapter shall provide a report no later than June 30, 1998, to the Governor, the Senate Committee on Governmental Organization, the Assembly Committee on Local Government, and the Senate and Assembly Budget Committees, describing the progress towards providing alternative emergency shelters in lieu of the Armory Temporary Emergency Shelter Program. The report shall describe recent activities, planned activities, obstacles and proposed solutions to the obstacles. If the report is not provided by June 30, 1998, armories shall not be made available to the local government for the Armory Temporary Emergency Shelter Program after July 1, 1998.

SEC. 4. Section 15301.6 is added to the Government Code, to read:

15301.6. (a) Each county that obtains a license under Section 15301.3 shall establish, on or before November 1, 1997, a local shelter advisory committee, which shall have all of the following responsibilities:

(1) To address issues related to shelter operation, including, but not limited to, sanitation and security issues.

(2) To ensure that the shelter maintains a "good neighbor policy."

(3) To assist in finding long-term solutions for providing housing for the homeless to reduce the degree to which state armories are utilized as sites for housing homeless persons.

(b) The county shall select the advisory committee, which shall include representatives from the county and cities within the county in which armories are utilized, local government planning departments, the California National Guard, homeless service providers, local peace officers, representatives of affected community organizations, and advocates for homeless persons. Counties may utilize existing homeless task forces, including, but not limited to, a task force for purposes of the Federal Emergency Management Agency (FEMA), if the membership of the task force has representatives that meet all of the requirements of this subdivision.

SEC. 5. Section 15301.7 of the Government Code is repealed.

SEC. 6. It is the intent of the Legislature that the Legislative Analyst's office, in consultation with the Military Department, the Department of Housing and Community Development, the

Department of Community Services and Development, advocates for housing for the homeless, and other parties, as necessary, analyze and recommend to the Legislature alternative approaches for providing cold weather assistance to homeless persons that could replace the existing Temporary Emergency Shelter Program by which homeless persons are housed at specified armories of the National Guard. The Legislative Analyst shall report its findings and recommendations in this matter to the Joint Legislative Budget Committee and the budget committees of both the Assembly and the Senate by March 1, 1998.

SEC. 7. Sections 1 to 6, inclusive, of this bill shall become operative only if Assembly Bill 242 and Assembly Bill 67 of the 1997–98 Regular Session are enacted, and become operative.

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 adequate shelter for the homeless, it is necessary that this act take effect immediately.

CHAPTER 717

An act to amend Section 26802.5 of the Government Code, relating to counties.

[Approved by Governor October 6, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 26802.5 of the Government Code is amended to read:

26802.5. In a county of the 11th, 15th, 17th, 18th, 21st, 22nd, 25th, or 36th class, as ascertained and determined by Section 28020, a registrar of voters may be appointed by the board of supervisors in the same manner as other county officers are appointed. In those counties, the county clerk is not ex officio registrar of voters, and the registrar of voters shall discharge all duties vested by law in the county clerk which duties relate to and are a part of the election procedure.

CHAPTER 718

An act to amend Section 10177.4 of the Business and Professions Code, and to add Section 641.4 to the Penal Code, relating to real estate.

[Approved by Governor October 6, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. The Legislature finds and declares that illegal rebates and kickbacks are a significant problem in the marketing of title insurance in California, and have been a problem for more than two decades. Administrative penalties available to the Department of Insurance and the Department of Real Estate are ineffective in curtailing this illegal activity, which stifles competition, increases costs to consumers, and prejudices legitimate competitors in the marketplace.

It is the intent of the Legislature in enacting this bill to provide an effective deterrent to illegal rebates and kickbacks by clarifying that those who knowingly violate the law are guilty of commercial bribery.

It is further the intent of the Legislature to ensure that real estate licensees who are not participating in this illegal rebate and kickback activity report, without fear of license sanctions, their knowledge of participation in this activity by other licensees to the Real Estate Commissioner.

SEC. 2. Section 10177.4 of the Business and Professions Code is amended to read:

10177.4. (a) Notwithstanding any other provision of law, the commissioner may, after hearing in accordance with this part relating to hearings, suspend or revoke the license of a real estate licensee who claims, demands, or receives a commission, fee, or other consideration, as compensation or inducement, for referral of customers to any escrow agent, structural pest control firm, home protection company, title insurer, controlled escrow company, or underwritten title company. A licensee may not be disciplined under any provision of this part for reporting to the commissioner violations of this section by another licensee, unless the licensee making the report had guilty knowledge of, or committed or participated in, the violation of this section.

(b) The term "other consideration" as used in this section does not include any of the following:

(1) Bona fide payments for goods or facilities actually furnished by a licensee or for services actually performed by a licensee, provided these payments are reasonably related to the value of the goods, facilities, or services furnished.

(2) Furnishing of documents, services, information, advertising, educational materials, or items of a like nature that are customary in the real estate business and that relate to the product or services of the furnisher and that are available on a similar and essentially equal basis to all customers or the agents of the customers of the furnisher.

(3) Moderate expenses for food, meals, beverages, and similar items furnished to individual licensees or groups or associations of licensees within a context of customary business, educational, or promotional practices pertaining to the business of the furnisher.

(4) Items of a character and magnitude similar to those in paragraphs (2) and (3) that are promotional of the furnisher's business customary in the real estate business, and available on a similar and essentially equal basis to all customers, or the agents of the customers, of the furnisher.

(c) Nothing in this section shall relieve any licensee of the obligation of disclosure otherwise required by this part.

SEC. 3. Section 641.4 is added to the Penal Code, to read:

641.4. (a) An employee of a title insurer, underwritten title company, or controlled escrow company who corruptly violates Section 12404 of the Insurance Code by paying, directly or indirectly, a commission, compensation, or other consideration to a licensee, as defined in Section 10011 of the Business and Professions Code, or a licensee who corruptly violates Section 10177.4 of the Business and Professions Code by receiving from an employee of a title insurer, underwritten title company, or controlled escrow company a commission, compensation, or other consideration, as an inducement for the placement or referral of title business, is guilty of commercial bribery.

(b) For purposes of this section, commercial bribery is punishable by imprisonment in a county jail for not more than one year, or by a fine of ten thousand dollars ($10,000) for each unlawful transaction, or by both a fine and imprisonment.

(c) For purposes of this section, "title business" has the same meaning as that used in Section 12404 of the Insurance Code.

(d) This section shall not preclude prosecution under any other law.

(e) This section shall not be construed to supersede or affect Section 641.3. A person may be charged with a violation of this section and Section 641.3. However, a defendant may not be punished under this section and Section 641.3 for the same act that constitutes a violation of both this section and Section 641.3.

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 719

An act to add Sections 15338.5 and 15338.6 to, and to repeal Sections 15399.57 and 15399.58 of, the Government Code, relating to state government.

[Approved by Governor October 6, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 15338.5 is added to the Government Code, to read:

15338.5. (a) The Trade and Commerce Agency shall establish, compile, and maintain a list of all fees or charges assessed or collected by any state board, agency, or department.

(b) For purposes of this section and Section 15338.6 the following terms shall be construed as follows:

(1) "Assessed or collected" means net revenues, exclusive of any refunds or credits provided to fee payers.

(2) "Fee or charge" does not include any fee or charge collected by a state board, agency, or department on behalf of any local or regional entity, department, or district. "Fee or charge" also does not include entrance fees, such as entrance fees to a park or museum, or fees for services, such as fees for the duplication of documents or publication subscriptions.

(3) "State board, agency, or department" does not include any local or regional entity, department, or district.

(c) The list maintained pursuant to subdivision (a) shall be available to the public pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

(d) (1) (A) Commencing with calendar year 1999, the California Environmental Protection Agency, the Resources Agency, and the State Board of Equalization shall submit to the Trade and Commerce Agency annual reports of the total dollar amount of fees or charges collected or assessed by each of those agencies and subdivisions thereof. Commencing with calendar year 2000, each state board, agency, or department shall submit to the Trade and Commerce Agency annual reports of the total dollar amount of fees or charges

collected or assessed by each state board, agency, or department. In lieu of the annual report required to be submitted to the Trade and Commerce Agency pursuant to this subparagraph on a calendar year basis, the California Environmental Protection Agency, the Resources Agency, the State Board of Equalization, or the state board, agency, or department may submit the annual report to the Trade and Commerce Agency on a fiscal year basis, if the applicable state board, agency, or department already collects the required information on a fiscal year basis. The report for each year shall be submitted on or before the last day of the first quarter following that year. The report shall list separately each fee or charge collected or assessed and the information described in paragraphs (1) and (2) of subdivision (a) of Section 15338.6.

(B) The California Environmental Protection Agency, in consultation with the Trade and Commerce Agency, other state agencies, and the Joint Legislative Audit Committee, shall develop, no later than July 31, 1998, a form to be used for submitting the report required by subparagraph (A). Commencing with the first quarter of calendar year 2000, this form may be used by each state board, agency, or department when submitting a report.

(C) To minimize duplication of effort and avoid unnecessary reports, each state board, department, or agency may submit the required information in a format different from the form developed according to subparagraph (B).

(2) The report submitted pursuant to paragraph (1) shall contain a certification by the state board, agency, or department that the information submitted in the report is, to the best of their knowledge, an accurate and complete record of the fees or charges assessed or collected during the year for which the report is submitted.

(3) Upon notification of the Trade and Commerce Agency a state board, department, or agency shall be granted an additional three-month extension for the initial submittal of the report.

(e) (1) Within 30 days from the date that the Trade and Commerce Agency receives the information submitted by a state board, agency, or department pursuant to subdivision (d), the Trade and Commerce Agency shall enter the information into the list maintained pursuant to subdivision (a).

(2) The Trade and Commerce Agency shall enter fees or charges collected or assessed by the Trade and Commerce Agency itself into the list maintained pursuant to subdivision (a), for each year on or before the last day of the first quarter following that year. Each entry shall list separately each fee or charge collected or assessed.

SEC. 2. Section 15338.6 is added to the Government Code, to read:

15338.6. (a) Commencing in 2000, the Trade and Commerce Agency shall create and make available to the public an annual inventory that, based on information in the list maintained pursuant to subdivision (a) of Section 15338.5, shall list the total dollar amount

of fees or charges assessed or collected by all state boards, agencies, or departments during the preceding calendar year. The inventory shall be created by the end of the quarter following the deadline by which calendar year reports are due to the Trade and Commerce Agency pursuant to Section 15338.5. The inventory shall include all of the following items:

(1) The total dollar amount of fees or charges assessed or collected by state boards, agencies, or departments, under each provision of law, which shall be listed separately. For each separate listing, the inventory shall identify the state board, agency, or department that collected or assessed the fee or charge. If more than one state board, agency, or department collected or assessed a fee or charge pursuant to the same statutory or regulatory provision, the inventory shall separately list the total dollar amount collected or assessed by each state board, agency, or department pursuant to that provision.

(2) The basis on which the fee revenue in each separate category listed pursuant to paragraph (1) was assessed or collected, including, but not limited to, number of permits or licenses issued, number of fines assessed, and the rate basis on which fees or charges are assessed.

(3) The total dollar amount of fees or charges assessed or collected by each state board, agency, or department during the preceding calendar year. This list shall not be broken down in accordance with the statutory provision, statute, or regulation that authorizes the fee or charge.

(b) The annual inventory shall contain a certification by the Trade and Commerce Agency that the inventory is an accurate and complete record of the reports submitted to the agency for the preceding calendar year pursuant to Section 15338.5.

(c) For purposes of the initial annual inventory only, the Trade and Commerce Agency shall include its costs incurred in complying with this section and Section 15338.5.

(d) The requirement enumerated in subdivision (b) of Joint Rule 37.4 of the 1997–98 Regular Session of the Legislature may be utilized by the Joint Legislative Audit Committee in complying with this section and Section 15338.5.

SEC. 3. Section 15399.57 of the Government Code is repealed.

SEC. 4. Section 15399.58 of the Government Code is repealed.

CHAPTER 720

An act to amend Section 4548 of, and to add Sections 4502.1, 4502.2, and 4502.3 to, the Business and Professions Code, relating to psychiatric technicians, and making an appropriation therefor.

[Approved by Governor October 6, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 4502.1 is added to the Business and Professions Code, to read:

4502.1. A psychiatric technician, working in a mental health facility or developmental disability facility, when prescribed by a physician and surgeon, may administer medications by hypodermic injection.

SEC. 2. Section 4502.2 is added to the Business and Professions Code, to read:

4502.2. A psychiatric technician, when prescribed by a physician and surgeon, may withdraw blood from a patient with a mental illness or developmental disability if the psychiatric technician has received certification from the board that the psychiatric technician has completed a prescribed course of instruction approved by the board or has demonstrated competence to the satisfaction of the board.

SEC. 3. Section 4502.3 is added to the Business and Professions Code, to read:

4502.3. (a) A psychiatric technician, when prescribed by a physician and surgeon, may perform the following activities on a patient with a mental illness or developmental disability:

(1) Tuberculin, coccidioidin, and histoplasmin skin tests, providing the administration is within the course of a tuberculosis control program.

(2) Immunization techniques, providing the administration is upon the standing orders of a supervising physician and surgeon or pursuant to written guidelines adopted by a hospital or medical group with whom the supervising physician and surgeon is associated.

(b) In performing activities pursuant to subdivision (a), the psychiatric technician shall satisfactorily demonstrate competence in all of the following:

(1) Administering the testing or immunization agents, including knowledge of all indications and contraindications for the administration of the agents.

(2) Recognizing any emergency reactions to the agent that constitute a danger to the health or life of the patient.

(3) Treating those emergency reactions by using procedures, medication, and equipment within the scope of practice of the psychiatric technician.

SEC. 4. Section 4548 of the Business and Professions Code is amended to read:

4548. The amounts of the fees payable pursuant to this chapter shall be established by the board according to the following schedule:

(a) The application fee shall be fifty dollars ($50).

(b) The fee for any reexamination applications shall be fifty dollars ($50).

(c) The biennial renewal fee shall be one hundred sixty dollars ($160).

(d) The delinquency fee for failure to pay the renewal fee within the prescribed time shall be no more than 50 percent of the regular renewal fee.

(e) The initial license fee shall be an amount equal to the renewal fee in effect on the date the application for the license is filed.

(f) The fee for an interim permit shall be twenty dollars ($20).

(g) The fee for a duplicate license shall be twenty dollars ($20).

(h) The fee for endorsement of a license shall be twenty dollars ($20).

(i) The fee for certification in blood withdrawal shall be twenty dollars ($20).

(j) The biennial fee for a provider of a course to meet the certification requirements for blood withdrawal shall be one hundred fifty dollars ($150).

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 721

An act to add Section 69639 to, and to add and repeal Article 7 (commencing with Section 69620) to Chapter 2 of Part 42 of, the Education Code, relating to postsecondary education.

[Approved by Governor October 6, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Article 7 (commencing with Section 69620) is added to Chapter 2 of Part 42 of the Education Code, to read:

Article 7. Child Development Teacher and Supervisor Grant Program

69620. There is hereby established the Child Development Teacher and Supervisor Grant Program, to be administered by the Student Aid Commission, with participation by students attending California public or private two-year or four-year postsecondary educational institutions who intend to teach or supervise in the field of child care and development in a licensed children's center. The Student Aid Commission may enter into an agreement with another state or local agency to administer this program.

69621. For purposes of this article, the following definitions apply:

(a) "Child Development Permit" means a permit issued by the Commission on Teacher Credentialing that authorizes an individual to teach , instruct, or supervise in a licensed child care and development program.

(b) "Licensed children's center" means a public school district-based, nonprofit community-based, or private proprietary program licensed by the State Department of Social Services under the health and safety requirements of Title 22 of the California Code of Regulations or administered by the State Department of Education under Title 5 of the California Code of Regulations. Licensed children's centers include federal and state-subsidized and nonsubsidized child care and development programs serving children part day or full day.

69622. (a) Participants shall be enrolled in an approved course of study leading to the teacher, site supervisor, or program director level of the Child Development Permit.

(b) An applicant shall be eligible to participate if he or she meets one of the following criteria:

(1) Is nominated by a postsecondary institution.

(2) Is nominated by his or her employing agency that holds an approved waiver of staffing qualifications on behalf of the applicant.

(c) From the list of applicants who are eligible under subdivisions (a) and (b), the Student Aid Commission, or an agency designated by the commission, shall select participants on the basis of their demonstrated financial need and academic achievement, which may include, but not be limited to, high school grade-point average, college grade-point average, or academic test scores.

(d) Participants shall maintain no less than half-time enrollment and satisfactory academic progress as defined by the postsecondary educational institution.

(e) Recipients of a grant may renew their participation by maintaining satisfactory academic progress, financial need, and intent to pursue the approved course of study leading to the teacher, site supervisor, or program director level as provided in subdivision (a). The maximum amount any one recipient may receive through the grant program is six thousand dollars ($6,000).

(f) Participants may not concurrently receive benefits from the grant program under this article and from the Child Development Teacher Loan Assumption Program.

69623. (a) To receive a grant under this article, a participant shall enter into a contractual agreement with the Student Aid Commission under which the participant agrees to do all of the following:

(1) Pursue a course of study leading to the Child Development Permit at the teacher, site supervisor, or program director level.

(2) Maintain full-time employment in a licensed children's center in California for a period of one year for each year in which grant assistance was received and provide the Student Aid Commission with evidence of compliance with this requirement.

(b) Each participant shall complete and return to the Student Aid Commission an employment verification for each year of service as a teacher, instructor, or supervisor. A year of employment may be based on a calendar year or a school year.

(c) The Student Aid Commission shall develop appropriate mechanisms to document and report annually to the State Department of Education regarding compliance with the requirements of paragraph (2) of subdivision (a).

69624. (a) It is the intent of the Legislature that up to 100 new grants be awarded each year, or that the maximum number of grants be based on the amount of federal funds available from the Child Development Block Grant Act of 1990 (P.L. 97-35).

(b) (1) Grants shall be awarded in the amount of two thousand dollars ($2,000) for each academic year if the participant is enrolled at least one-half time in a four-year institution.

(2) Grants shall be awarded in the amount of one thousand dollars ($1,000) for each academic year if the participant is enrolled at least one-half time in a two-year institution.

(3) Participants may renew their awards for a maximum of one additional year.

69625. (a) In order to accomplish the purposes set forth in this article, commencing January 1, 1998, the Controller, the California Department of Education, the California Department of Social Services, or any other state agency receiving funds from the Child Care Development Block Grant Act of 1990 (P.L. 97-35) shall make these funds available to the Student Aid Commission for this program only to the extent this program is incorporated into, and approved in, the state plan established pursuant to subsection (a) of Section 658E of Subchapter C as contained in Section 5082 of the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508).

(b) For the purpose of implementing this article, the California Department of Education or designated state agency shall enter into an interagency agreement with the Student Aid Commission to allocate federal funds received annually for purposes of this program and to include funds for the administrative costs.

(c) On or before January 1, 1999, and each year thereafter, the Student Aid Commission shall report to the California Department of Education or designated state agency regarding the federal funding level required to award 100 new grants and all of the renewal grants annually. The California Department of Education or designated state agency shall take these amounts into consideration when developing the state plan referenced in subdivision (a) of Section 69625. The California Department of Education or designated state agency shall notify the Student Aid Commission of any revision to the federal funding level as reflected in changes to the Child Care and Development Block Grant State Plan.

(d) This program is contingent upon the receipt of federal funds for the child care and development block grant for the purposes of implementing this program.

69626. (a) The Student Aid Commission shall administer the Child Development Teacher and Supervisor Grant Program. This includes determining the application procedures and the selection criteria for grant awards.

(b) It is the intent of the Legislature that the Student Aid Commission consult with the Child Development Division of the California Department of Education, postsecondary educational institutions, and child care and development representatives of statewide organizations regarding the development of the program, including the program requirements and selection criteria.

69627. Notwithstanding Section 7550.5 of the Government Code, the Student Aid Commission shall report to the Governor and the Legislature by January 1, 2001, on the Child Development Teacher and Supervisor Grant Program to assess the following:

(a) The number of applicants annually.

(b) The number of participants annually.

(c) The rate of compliance with academic and employment requirements.

(d) Participating postsecondary educational institutions.

(e) Needs assessment for program growth based on the eligible pool of applicants.

(f) Participation and success rates for each permit.

(g) The amount of grant funds awarded each year, by institution.

69628. This article shall not be implemented unless and until federal funds are made available for the purposes of implementing this article in accordance with subdivision (a) of Section 69625.

69629. This article shall become inoperative on June 30, 2002, and, as of January 1, 2003, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2003, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 69639 is added to the Education Code, to read:

69639. This article shall only apply to loans approved by the Student Aid Commission prior to December 31, 1997.

CHAPTER 722

An act to add Section 20103.6 to the Public Contract Code, relating to local agency contracts.

[Approved by Governor October 6, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 20103.6 is added to the Public Contract Code, to read:

20103.6. (a) (1) Any local agency subject to this chapter shall, in the procurement of architectural design services requiring an expenditure in excess of ten thousand dollars ($10,000), include in any request for proposals for those services or invitations to bid from a prequalified list for a specific project a disclosure of any contract provision that would require the contracting architect to indemnify and hold harmless the local agency against any and all liability, whether or not caused by the activity of the contracting architect.

(2) The disclosure statement shall be prominently set forth in bold type.

(b) In the event a local agency fails to comply with paragraph (1) of subdivision (a), that local agency shall (1) be precluded from requiring the selected architect to agree to any contract provision requiring the selected architect to indemnify or hold harmless the local agency against any and all liability not caused by the activity of the selected architect, (2) cease discussions with the selected architect and reopen the request for proposals or invitations to bid from a qualification list, or (3) mutually agree to an indemnity clause acceptable to both parties.

(c) This section shall become operative on July 1, 1998.

CHAPTER 723

An act to add Section 14085.51 to the Welfare and Institutions Code, relating to human services.

[Approved by Governor October 6, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 14085.51 of the Welfare and Institutions Code is amended to read:

14085.51. (a) A disproportionate share hospital that qualifies under Section 14085.5 that has submitted final plans for an eligible capital project in accordance with subparagraph (C) of paragraph (1) of subdivision (b) of Section 14085.5 may submit substitute final plans and shall qualify for supplemental reimbursement under Section 14085.5 for the revised capital project as described in the substitute final plans if all of the following conditions are met:

(1) The substituted capital project continues to meet the requirements for eligible projects as specified in Section 14085.5.

(2) The hospital provides written notification to the department of the status of the project on or before January 1 of each year commencing January 1, 1999. This notification shall, at a minimum, include a narrative description of the project, identification of medical services to be provided, documentation substantiating service needs, projected construction timeframes, and total estimated revised capital project costs.

(3) The substitute final plans are submitted to the Office of Statewide Health Planning and Development prior to June 30, 1995, or, where debt was issued prior to July 1, 1996, for the capital project for which the plans were originally submitted, the substitute final plans are submitted to the Office of Statewide Health Planning and Development prior to December 31, 2000.

(b) The revised capital project may provide for any one or more of the following:

(1) A reduction in size and scope of the original project plan.

(2) Tenant interior improvements for the entire building not specified in the original project plan.

(3) Modifications to the foundation, structural frame, and building exterior shell, commonly known as the shell and core.

(4) Modifications necessary to comply with current seismic safety standards.

(c) The supplemental reimbursement under Section 14085.5 for the revised capital project shall be no greater than the supplemental reimbursement for the original capital project as evidenced by the architects' and engineers' certified cost estimate of the original plan submission and the substitute plan submission.

(d) (1) A project, if eligible under the criteria set forth in this section and Section 14085.5, shall commence construction on or before January 1, 2002.

(2) In addition, the project shall be licensed for operation and available for occupancy on or before January 1, 2009.

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CHAPTER 724

An act to amend Section 641 of the Code of Civil Procedure, to amend Sections 39, 250, 1000, 1060, 1061, 1063, 1064, 1890, 2356.5, 8226, 17200, 17203, 20123, 20223, and 21350 of, to add Sections 1460.1, 16060.5, 16061.5, 16061.7, and 16061.8 to, to add Part 3 (commencing with Section 1300) to Division 3 of, to add Part 6 (commencing with Section 21600) to Division 11 of, to repeal and add Section 16063 of, and to repeal Sections 2312, 3024, 4948, 8406, 17207, and 19028 of, to repeal Chapter 11 (commencing with Section 2750) of Part 4 of Division 4, to repeal Chapter 5 (commencing with Section 6560) of Division 6, and to repeal Article 3 (commencing with Section 7240) of Chapter 3 of Part 1 of Division 7, of the Probate Code, and to amend Sections 10850, 14100.2, 15610.30, and 15657 of the Welfare and Institutions Code, relating to estate planning, trusts, and probate.

[Approved by Governor October 6, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 641 of the Code of Civil Procedure is amended to read:

641. A party may object to the appointment of any person as referee, on one or more of the following grounds:

(a) A want of any of the qualifications prescribed by statute to render a person competent as a juror, except a requirement of residence within a particular county in the state.

(b) Consanguinity or affinity, within the third degree, to either party, or to an officer of a corporation which is a party, or to any judge of the court in which the appointment shall be made.

(c) Standing in the relation of guardian and ward, conservator and conservatee, master and servant, employer and clerk, or principal and agent, to either party; or being a member of the family of either party; or a partner in business with either party; or security on any bond or obligation for either party.

(d) Having served as a juror or been a witness on any trial between the same parties for the same cause of action.

(e) Interest on the part of such person in the event of the action, or in the main question involved in the action.

(f) Having formed or expressed an unqualified opinion or belief as to the merits of the action.

(g) The existence of a state of mind in the potential referee evincing enmity against or bias toward either party.

SEC. 2. Section 39 of the Probate Code is amended to read:

39. "Fiduciary" means personal representative, trustee, guardian, conservator, attorney-in-fact under a power of attorney, custodian under the California Uniform Transfer To Minors Act (Part

9 (commencing with Section 3900) of Division 4), or other legal representative subject to this code.

SEC. 3. Section 250 of the Probate Code is amended to read:

250. (a) A person who feloniously and intentionally kills the decedent is not entitled to any of the following:

(1) Any property, interest, or benefit under a will of the decedent, or a trust created by or for the benefit of the decedent or in which the decedent has an interest, including any general or special power of appointment conferred by the will or trust on the killer and any nomination of the killer as executor, trustee, guardian, or conservator or custodian made by the will or trust.

(2) Any property of the decedent by intestate succession.

(3) Any of the decedent's quasi-community property the killer would otherwise acquire under Section 101 or 102 upon the death of the decedent.

(4) Any property of the decedent under Part 5 (commencing with Section 5700) of Division 5.

(5) Any property of the decedent under Part 3 (commencing with Section 6500) of Division 6.

(b) In the cases covered by subdivision (a):

(1) The property interest or benefit referred to in paragraph (1) of subdivision (a) passes as if the killer had predeceased the decedent and Section 21110 does not apply.

(2) Any property interest or benefit referred to in paragraph (1) of subdivision (a) which passes under a power of appointment and by reason of the death of the decedent passes as if the killer had predeceased the decedent, and Section 1389.4 of the Civil Code does not apply.

(3) Any nomination in a will or trust of the killer as executor, trustee, guardian, conservator, or custodian which becomes effective as a result of the death of the decedent shall be interpreted as if the killer had predeceased the decedent.

SEC. 4. Section 1000 of the Probate Code is amended to read:

1000. Except to the extent that this code provides applicable rules, the rules of practice applicable to civil actions, including discovery proceedings, apply to, and constitute the rules of practice in, proceedings under this code. All issues of fact joined in probate proceedings shall be tried in conformity with the rules of practice in civil actions.

SEC. 5. Section 1060 of the Probate Code is amended to read:

1060. This chapter governs all accounts to be filed with the court. Except as specifically provided elsewhere in this code, or unless good cause is shown therefore, no information in addition to that required in this chapter need be in an account.

SEC. 6. Section 1061 of the Probate Code is amended to read:

1061. (a) All accounts shall state the period covered by the account and contain a summary showing all of the following, to the extent applicable:

(1) The property on hand at the beginning of the period covered by the account, which shall be the value of the property initially received by the fiduciary if this is the first account, and shall be the property on hand at the end of the prior account if this is a subsequent account.

(2) The value of any assets received during the period of the accounting which are not assets on hand as of the commencement of the administration of an estate.

(3) The amount of any receipts of income or principal, excluding items listed under paragraphs (1) and (2) or receipts from a trade or business.

(4) Net income from a trade or business.

(5) Gains on sales.

(6) The amount of disbursements, excluding disbursements for a trade or business or distributions.

(7) Loss on sales.

(8) Net loss from trade or business.

(9) Distributions to beneficiaries, the ward or conservatee.

(10) Property on hand at the end of the accounting period, stated at its carry value.

(b) The summary shall be in a format substantially the same as the following, except that inapplicable categories need not be shown:

SUMMARY OF ACCOUNT

CHARGES:

Property on hand at beginning of account (or Inventories)	$ _____
Additional property received (or Supplemental Inventories)	_____
Receipts (Schedule _____)	_____
Gains on Sale or Other Disposition (Schedule _____)	_____
Net income from trade or business (Schedule_____)	_____
Total Charges:	$ _____

CREDITS:

Disbursements (Schedule _____)	$ _____
Losses on Sale or Other Disposition (Schedule _____)	_____
Net loss from trade or business (Schedule _____)	_____

Distributions (Schedule _____) _____
Property on hand at close of account
(Schedule _____) _____

Total Credits: $ _____

(c) Total charges shall equal total credits.

(d) For purposes of this section, the terms "net income" and "net loss" shall be utilized in accordance with general accounting principles. Nothing in this section is intended to require that the preparation of the summary must include "net income" and "net loss" as reflected in the tax returns governing the period of the account.

SEC. 7. Section 1063 of the Probate Code is amended to read:

1063. (a) In all accounts, there shall be an additional schedule showing the estimated market value of the assets on hand as of the end of the accounting period, and a schedule of the estimated market value of the assets on hand as of the beginning of the accounting period for all accounts subsequent to the initial account. The requirement of an estimated value of real estate, a closely held business, or other assets without a ready market, may be satisfied by a good faith estimate by the fiduciary.

(b) If there were purchases or other changes in the form of assets occurring during the period of the account, there shall be a schedule showing these transactions. However, no reporting is required for transfers between cash or accounts in a financial institution or money market mutual funds as defined in subdivision (d) of Section 8901.

(c) If an estate of a decedent or a trust will be distributed to an income beneficiary, there shall be a schedule showing an allocation of receipts and disbursements between principal and income.

(d) If there is specifically devised property, there shall be an additional schedule accounting for income, disbursements, and proceeds of sale pursuant to Sections 12002 and 16314.

(e) If any interest has been paid or is to be paid under Section 12003, 12004, 12005, or 16314, there shall be a schedule showing the calculation of the interest.

(f) If the accounting contemplates a proposed distribution, there shall be a schedule setting forth the proposed distribution, including the allocation of income required under Section 12006. If the distribution requires an allocation between trusts, the allocation shall be set forth on the schedule, unless the allocation is to be made by a trustee after receipt of the assets. If the distribution requires valuation of assets as of the date of distribution, the schedule shall set forth the fair market value of those assets.

(g) If, at the end of the accounting period, there are liabilities of the estate or trust, except current or future periodic payments,

including rent, salaries, utilities, or other recurring expenses, there shall be a schedule showing all of the following:

(1) All liabilities which are a lien on estate or trust assets.

(2) Taxes due but unpaid as shown on filed returns or assessments received subsequent to filing of returns.

(3) All notes payable.

(4) Any judgments for which the estate or trust is liable.

(5) Any other material liability.

SEC. 8. Section 1064 of the Probate Code is amended to read:

1064. (a) The petition for approval of the account or a report accompanying the petition shall contain all of the following:

(1) A description of all sales, purchases, changes in the form of assets, or other transactions occurring during the period of the account that are not otherwise readily understandable from the schedule.

(2) An explanation of any unusual items appearing in the account.

(3) A statement of all compensation paid from the assets subject to the account to the fiduciary or to the attorneys for the fiduciary other than pursuant to a prior court order.

(4) A statement disclosing any family or affiliate relationship between the fiduciary and any agent hired by the fiduciary during the accounting period.

(5) An allegation disclosing whether all of the cash has been invested and maintained in interest bearing accounts or in investments authorized by law or the governing instrument, except for an amount of cash that is reasonably necessary for the orderly administration of the estate.

(b) The filing of an account shall be deemed to include a petition requesting its approval, and may include additional petitions for authorization, instruction or confirmation authorized by the code, including, but not limited to, a request for an order for compensation of the fiduciary and the attorney for the fiduciary.

(c) For purposes of this section, "family" means a relationship created by blood or marriage. For purposes of this section, "affiliate" means an entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, the fiduciary.

SEC. 9. Section 1460.1 is added to the Probate Code, to read:

1460.1. Notwithstanding any other provision of this division, no notice is required to be given to any child under the age of 12 years if the court determines either of the following:

(a) Notice was properly given to a parent, guardian, or other person having legal custody of the minor, with whom the minor resides.

(b) The petition is brought by a parent, guardian, or other person having legal custody of the minor, with whom the minor resides.

SEC. 10. Section 1890 of the Probate Code is amended to read:

1890. (a) An order of the court under Section 1880 may be included in the order of appointment of the conservator if the order was requested in the petition for the appointment of the conservator or, except in the case of a limited conservator, may be made subsequently upon a petition made, noticed, and heard by the court in the manner provided in this article.

(b) In the case of a petition filed under this chapter requesting that the court make an order under this chapter or that the court modify or revoke an order made under this chapter, when the order applies to a limited conservatee, the order may only be made upon a petition made, noticed, and heard by the court in the manner provided by Article 3 (commencing with Section 1820) of Chapter 1.

(c) No court order under Section 1880, whether issued as part of an order granting the original petition for appointment of a conservator or issued subsequent thereto, may be granted unless supported by a declaration, filed at or before the hearing on the request, executed by a licensed physician, or a licensed psychologist within the scope of his or her licensure, and stating that the proposed conservatee or the conservatee, as the case may be, lacks the capacity to give an informed consent for any form of medical treatment and the reasons therefor. Nothing in this section shall be construed to expand the scope of practice of psychologists as set forth in the Business and Professions Code.

SEC. 11. Part 3 (commencing with Section 1300) is added to Division 3 of the Probate Code, to read:

PART 3. APPEALS

CHAPTER 1. GENERAL

1300. In all proceedings governed by this code, an appeal may be taken from the making of, or the refusal to make, any of the following orders:

(a) Directing, authorizing, approving, or confirming the sale, lease, encumbrance, grant of an option, purchase, conveyance, or exchange of property.

(b) Settling an account of a fiduciary.

(c) Authorizing, instructing, or directing a fiduciary, or approving or confirming the acts of a fiduciary.

(d) Directing or allowing payment of a debt, claim, or cost.

(e) Fixing, authorizing, allowing, or directing payment of compensation or expenses of an attorney.

(f) Fixing, directing, authorizing, or allowing payment of the compensation or expenses of a fiduciary.

(g) Surcharging, removing, or discharging a fiduciary.

(h) Transferring the property of the estate to a fiduciary in another jurisdiction.

(i) Allowing or denying a petition of the fiduciary to resign.

(j) Discharging a surety on the bond of a fiduciary.

1301. With respect to guardianships, conservatorships, and other protective proceedings, the grant or refusal to grant the following orders is appealable:

(a) Granting or revoking of letters of guardianship or conservatorship, except letters of temporary guardianship or temporary conservatorship.

(b) Granting permission to the guardian or conservator to fix the residence of the ward or conservatee at a place not within this state.

(c) Directing, authorizing, approving, or modifying payments, whether for support, maintenance, or education of the ward or conservatee or for a person legally entitled to support, maintenance, or education from the ward or conservatee.

(d) Granting or denying a petition under Section 2423 or under Article 10 (commencing with Section 2580) of Chapter 6 of Part 4 of Division 4.

(e) Affecting the legal capacity of the conservatee pursuant to Chapter 4 (commencing with Section 1870) of Part 3 of Division 4.

(f) Adjudicating the merits of a claim under Article 5 (commencing with Section 2500) of Article 6 (commencing with Section 2520) of Chapter 6 of Part 4 of Division 4.

(g) Granting or denying a petition under Chapter 3 (commencing with Section 3100) of Part 6 of Division 4.

1302. With respect to a power of attorney, the grant or refusal to grant the following orders is appealable:

(a) Any final order under Section 4941, except an order pursuant to subdivision (c) of Section 4941.

(b) Any final order under Section 4942, except an order pursuant to subdivision (c) of Section 4942.

(c) An order dismissing the petition or denying a motion to dismiss under Section 4944.

1303. With respect to a decedent's estate, the grant or refusal to grant the following orders is appealable:

(a) Granting or revoking letters to a personal representative, except letters of special administration or letters of special administration with general powers.

(b) Admitting a will to probate or revoking the probate of a will.

(c) Setting aside a small estate under Section 6609.

(d) Setting apart a probate homestead or property claimed to be exempt from enforcement of a money judgment.

(e) Granting, modifying, or terminating a family allowance.

(f) Adjudicating the merits of a claim under Chapter 11 (commencing with Section 9860) of Part 5 of Division 7.

(g) Determining heirship, succession, entitlement, or the persons to whom distribution should be made.

(h) Directing distribution of property.

(i) Determining that property passes to, or confirming that property belongs to, the surviving spouse under Section 13656.

(j) Authorizing a personal representative to invest or reinvest surplus money under Section 9732.

(k) Determining whether an action constitutes a contest under Chapter 2 (commencing with Section 21320) of Part 3 of Division 11.

(*l*) Determining the priority of debts under Chapter 3 (commencing with Section 11440) of Part 9 of Division 7.

1304. With respect to a trust, the grant or denial of the following orders is appealable:

(a) Any final order under Chapter 3 (commencing with Section 17200) of Part 5 of Division 9, except the following:

(1) Compelling the trustee to submit an account or report acts as trustee.

(2) Accepting the resignation of the trustee.

(b) Any final order under Chapter 2 (commencing with Section 19020) of Part 8 of Division 9.

(c) Any final order under Part 1 (commencing with Section 20100) and Part 2 (commencing with Section 20200) of Division 10.

(d) Determining whether an action constitutes a contest under Chapter 2 (commencing with Section 21320) of Part 3 of Division 11.

CHAPTER 2. EFFECT OF AN APPEAL

1310. (a) Except as provided in subdivisions (b), (c), and (d), an appeal pursuant to Chapter 1 stays the operation and effect of the judgment or order.

(b) Notwithstanding that an appeal is taken from the judgment or order, for the purpose of preventing injury or loss to a person or property, the trial court may direct the exercise of the powers of the fiduciary, or may appoint a temporary guardian or conservator of the person or estate, or both, or special administrator, to exercise the powers, from time to time, as if no appeal were pending. All acts of the fiduciary pursuant to the directions of the court made under this subdivision are valid, irrespective of the result of the appeal. An appeal of the directions made by the court under this subdivision shall not stay these directions.

(c) In proceedings for guardianship of the person, Section 917.7 of the Code of Civil Procedure shall apply.

(d) An appeal shall not stay the operation and effect of the order if the court requires an undertaking, as provided in Section 917.9 of the Code of Civil Procedure, and the undertaking is not given.

1311. If an order appointing a fiduciary is reversed on appeal for error, all acts of the fiduciary performed after issuance of letters and prior to the reversal are as valid as though the order were affirmed and the person appointed is not liable for any otherwise proper act done in good faith before the reversal, nor is any transaction void by

reason of the reversal if entered into with a third person dealing in good faith and for value.

1312. Notwithstanding the repeal of former Section 1297 by Chapter 1199 of the Statutes of 1988, an appeal may be taken from an order or the refusal to make an order fixing an inheritance tax or determining that none is due.

SEC. 12. Section 2312 of the Probate Code is repealed.

SEC. 13. Section 2356.5 of the Probate Code is amended to read:

2356.5. (a) The Legislature hereby finds and declares:

(1) That people with dementia, as defined in the last published edition of the "Diagnostic and Statistical Manual of Mental Disorders," should have a conservatorship to serve their unique and special needs .

(2) That, by adding powers to the probate conservatorship for people with dementia, their unique and special needs can be met. This will reduce costs to the conservatee and the family of the conservatee, reduce costly administration by state and county government, and safeguard the basic dignity and rights of the conservatee.

(3) That it is the intent of the Legislature to recognize that the administration of psychotropic medications has been, and can be, abused by caregivers and, therefore, granting powers to a conservator to authorize these medications for the treatment of dementia requires the protections specified in this section.

(b) Notwithstanding any other provision of law, a conservator may authorize the placement of a conservatee in a secured perimeter residential care facility for the elderly operated pursuant to Section 1569.698 of the Health and Safety Code, or a locked and secured nursing facility which specializes in the care and treatment of people with dementia pursuant to subdivision (c) of Section 1569.691 of the Health and Safety Code, and which has a care plan that meets the requirements of Section 87724 of Title 22 of the California Code of Regulations, upon a court's finding, by clear and convincing evidence, of all of the following:

(1) The conservatee has dementia, as defined in the last published edition of the "Diagnostic and Statistical Manual of Mental Disorders."

(2) The conservatee lacks the capacity to give informed consent to this placement and has at least one mental function deficit pursuant to subdivision (a) of Section 812, and this deficit significantly impairs the person's ability to understand and appreciate the consequences of his or her actions pursuant to subdivision (b) of Section 812.

(3) The conservatee needs or would benefit from a restricted and secure environment, as demonstrated by evidence presented by the physician or psychologist referred to in paragraph (3) of subdivision (f).

(4) The court finds that the proposed placement in a locked facility is the least restrictive placement appropriate to the needs of the conservatee.

(c) Notwithstanding any other provision of law, a conservator of a person may authorize the administration of medications appropriate for the care and treatment of dementia, upon a court's finding, by clear and convincing evidence, of all of the following:

(1) The conservatee has dementia, as defined in the last published edition of the "Diagnostic and Statistical Manual of Mental Disorders."

(2) The conservatee lacks the capacity to give informed consent to the administration of medications appropriate to the care of dementia, and has at least one mental function deficit pursuant to subdivision (a) of Section 812, and this deficit or deficits significantly impairs the person's ability to understand and appreciate the consequences of his or her actions pursuant to subdivision (b) of Section 812.

(3) The conservatee needs or would benefit from appropriate medication as demonstrated by evidence presented by the physician or psychologist referred to in paragraph (3) of subdivision (f).

(d) Pursuant to subdivision (b) of Section 2355, in the case of a person who is an adherent of a religion whose tenets and practices call for a reliance on prayer alone for healing, the treatment required by the conservator under subdivision (c) shall be by an accredited practitioner of that religion in lieu of the administration of medications.

(e) A conservatee who is to be placed in a facility pursuant to this section shall not be placed in a mental health rehabilitation center as described in Section 5675 of the Welfare and Institutions Code, or in an institution for mental disease as described in Section 5900 of the Welfare and Institutions Code.

(f) A petition for authority to act under this section shall be governed by Section 2357, except:

(1) The conservatee shall be represented by an attorney pursuant to Chapter 4 (commencing with Section 1470) of Part 1.

(2) The conservatee shall be produced at the hearing, unless excused pursuant to Section 1893.

(3) The petition shall be supported by a declaration of a licensed physician, or a licensed psychologist within the scope of his or her licensure, regarding each of the findings required to be made under this section for any power requested, except that the psychologist has at least two years of experience in diagnosing dementia.

(4) The petition may be filed by any of the persons designated in Section 1891.

(g) The court investigator shall annually investigate and report to the court every two years pursuant to Sections 1850 and 1851 if the conservator is authorized to act under this section. In addition to the other matters provided in Section 1851, the conservatee shall be

specifically advised by the investigator that the conservatee has the right to object to the conservator's powers granted under this section, and the report shall also include whether powers granted under this section are warranted. If the conservatee objects to the conservator's powers granted under this section, or the investigator determines that some change in the powers granted under this section is warranted, the court shall provide a copy of the report to the attorney of record for the conservatee. If no attorney has been appointed for the conservatee, one shall be appointed pursuant to Chapter 4 (commencing with Section 1470) of Part 1. The attorney shall, within 30 days after receiving this report, do one of the following:

(1) File a petition with the court regarding the status of the conservatee.

(2) File a written report with the court stating that the attorney has met with the conservatee and determined that the petition would be inappropriate.

(h) A petition to terminate authority granted under this section shall be governed by Section 2359.

(i) Nothing in this section shall be construed to affect a conservatorship of the estate of a person who has dementia.

(j) Nothing in this section shall affect the laws that would otherwise apply in emergency situations.

(k) Nothing in this section shall affect current law regarding the power of a probate court to fix the residence of a conservatee or to authorize medical treatment for any conservatee who has not been determined to have dementia.

(*l*) (1) Until such time as the conservatorship becomes subject to review pursuant to Section 1850, this section shall not apply to a conservatorship established on or before the effective date of the adoption of Judicial Council forms that reflect the procedures authorized by this section, or January 1, 1998, whichever occurs first.

(2) Upon the adoption of Judicial Council forms that reflect the procedures authorized by this section or January 1, 1998, whichever occurs first, this section shall apply to any conservatorships established after that date.

SEC. 14. Section 3024 of the Probate Code is repealed.

SEC. 15. Chapter 11 (commencing with Section 2750) of Part 4 of Division 4 of the Probate Code is repealed.

SEC. 16. Section 4948 of the Probate Code is repealed.

SEC. 17. Chapter 5 (commencing with Section 6560) of Division 6 of the Probate Code is repealed.

SEC. 18. Article 3 (commencing with Section 7240) of Chapter 3 of Part 1 of Division 7 of the Probate Code is repealed.

SEC. 19. Section 8226 of the Probate Code is amended to read:

8226. (a) If no person contests the validity of a will or petitions for revocation of probate of the will within the time provided in this chapter, admission of the will to probate is conclusive, subject to Section 8007.

(b) Subject to subdivision (c), a will may be admitted to probate notwithstanding prior admission to probate of another will or prior distribution of property in the proceeding. The will may not affect property previously distributed, but the court may determine how any provision of the will affects property not yet distributed and how any provision of the will affects provisions of another will.

(c) If the proponent of a will has received notice of a petition for probate or a petition for letters of administration for a general personal representative, the proponent of the will may petition for probate of the will only within the later of either of the following time periods:

(1) One hundred twenty days after issuance of the order admitting the first will to probate or determining the decedent to be intestate.

(2) Sixty days after the proponent of the will first obtains knowledge of the will.

SEC. 20. Section 8406 of the Probate Code is repealed.

SEC. 21. Section 16060.5 is added to the Probate Code, to read:

16060.5. As used in this article, the "terms of the trust" shall include the written trust instrument of an irrevocable trust or those provisions of a written trust instrument that describe or affect an irrevocable portion of a trust, including, but not limited to, signatures, amendments, disclaimers, and any directions or instructions to the trustee that affect the administration or disposition of the trust.

SEC. 22. Section 16061.5 is added to the Probate Code, to read:

16061.5. (a) When a revocable trust or any portion thereof becomes irrevocable because of the death of one or more of the settlors of the trustor for any other reason, the trustee shall provide a true and complete copy of the terms of the irrevocable trust, or irrevocable portion of the trust, to any beneficiary of the trust who requests it and to any heir of a deceased settlor who requests it.

(b) The trustee shall, for purposes of this section, rely upon any final judicial determination of heirship. However, the trustee shall have discretion to make a good faith determination by any reasonable means of the heirs of a deceased settlor in the absence of a final judicial determination of heirship.

SEC. 23. Section 16061.7 is added to the Probate Code, to read:

16061.7. (a) A trustee shall serve a notification by the trustee described in this section in either of the following cases:

(1) When a revocable trust or any portion thereof becomes irrevocable because of the death of one or more of the settlors of the trust or for any other reason.

(2) When there is a change of trustees of an irrevocable trust.

(b) The notification by trustee required by subdivision (a) shall be served on each of the following:

(1) Each beneficiary of the irrevocable trust or irrevocable portion of the trust, subject to the limitations of Section 15804.

(2) If the event that requires trustee notification is the death of a settlor, to each heir of the deceased settlor.

(3) If the trust is a charitable trust subject to the supervision of the Attorney General, to the Attorney General.

(4) The trustee need not provide a copy of the notification by trustee to any beneficiary or heir the existence of whom is (A) known to the trustee but who cannot be located by the trustee after reasonable diligence, or (B) unknown to the trustee.

(c) The notification by trustee shall be served by mail to the last known address, pursuant to Section 1215, or by personal delivery.

(d) The notification by trustee shall be served not later than 60 days following the occurrence of the event requiring service of the notification by trustee, or 60 days following the trustee's becoming aware of the existence of a person entitled to receive notification by trustee, if that person was not known to the trustee on the occurrence of the event requiring service of the notification by trustee. If there is a vacancy in the office of the trustee on the date of the occurrence of the event requiring service of the notification by trustee, or if that event causes a vacancy, then the 60-day period for service of the notification by trustee commences on the date the new trustee commences to serve as trustee.

(e) The notification by trustee shall contain the following information:

(1) The identity of the settlor or settlors of the trust and the date of execution of the trust instrument.

(2) The name, mailing address and telephone number of each trustee of the trust.

(3) The address of the physical location where the principal place of administration of the trust is located, pursuant to Section 17002.

(4) Any additional information that may be required by the terms of the trust instrument.

(5) A notification that the recipient is entitled, upon reasonable request to the trustee, to receive from the trustee a true and complete copy of the terms of the trust.

(6) A warning, set out in a separate paragraph in not less than 10-point boldfaced type, or a reasonable equivalent thereof, that states as follows:

"You may not bring an action to contest the trust more than 120 days from the date this notification by the trustee is served upon you or 60 days from the day on which a copy of the terms of the trust is mailed or personally delivered to you in response to your request during that 120-day period, whichever is later."

(f) A trustee who fails to serve the notification by trustee as required by this section shall be responsible for all damages, including attorney's fees and costs, caused by the failure; provided, however, that this subdivision shall not apply in any case where a trustee makes a good faith effort to comply with this section. A trustee shall, for purposes of this section, rely upon any final judicial

determination of heirship; but the trustee shall have discretion to make a good faith determination by any reasonable means of the heirs of a deceased settlor in the absence of a final judicial determination of heirship known to the trustee.

(g) Any waiver by a settlor of the requirement of serving the notification by trustee required by this section is against public policy and shall be void.

(h) A trustee may serve a notification by trustee in the form required by this section on any person or persons in addition to those on whom the notice is required to be served. A trustee is not liable to any person for serving or for not serving the notice on any person in addition to those on whom the notice is required to be served.

SEC. 24. Section 16061.8 is added to the Probate Code, to read:

16061.8. No person who receives the notification by the trustee pursuant to this chapter may bring an action to contest the trust more than 120 days from the date the notification by the trustee is served upon him or her, or 60 days from the day on which a copy of the terms of the trust is mailed or personally delivered to him or her in response to his or her request during that 120-day period, whichever is later.

SEC. 25. Section 16063 of the Probate Code is repealed.

SEC. 26. Section 16063 is added to the Probate Code, to read:

16063. (a) An account furnished pursuant to Section 16062 shall contain the following information:

(1) A statement of receipts and disbursements of principal and income that have occurred during the last complete fiscal year of the trust or since the last account.

(2) A statement of the assets and liabilities of the trust as of the end of the last complete fiscal year of the trust or as of the end of the period covered by the account.

(3) The trustee's compensation for the last complete fiscal year of the trust or since the last account.

(4) The agents hired by the trustee, their relationship to the trustee, if any, and their compensation, for the last complete fiscal year of the trust or since the last account.

(5) A statement that the recipient of the account may petition the court pursuant to Section 17200 to obtain a court review of the account and of the acts of the trustee.

(6) A statement that claims against the trustee for breach of trust may not be made after the expiration of three years from the date the beneficiary receives an account or report disclosing facts giving rise to the claim.

(b) All accounts filed to be approved by a court shall be presented in the manner provided in Chapter 4 (commencing with Section 1060) of Part 1 of Division 3.

SEC. 27. Section 17200 of the Probate Code is amended to read:

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

concerning the internal affairs of the trust or to determine the existence of the trust.

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

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

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

(3) Determining the validity of a trust provision.

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

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

(6) Instructing the trustee.

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

(8) Granting powers to the trustee.

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

(10) Appointing or removing a trustee.

(11) Accepting the resignation of a trustee.

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

(13) Approving or directing the modification or termination of the trust.

(14) Approving or directing the combination or division of trusts.

(15) Amending or conforming the trust instrument in the manner required to qualify a decedent's estate for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States Internal Revenue Service, in any case in which all parties interested in the trust have submitted written agreement to the proposed changes or written disclaimer of interest.

(16) Authorizing or directing transfer of a trust or trust property to or from another jurisdiction.

(17) Directing transfer of a testamentary trust subject to continuing court jurisdiction from one county to another.

(18) Approving removal of a testamentary trust from continuing court jurisdiction.

(19) Reforming or excusing compliance with the governing instrument of an organization pursuant to Section 16105.

(20) Determining the liability of the trust for any debts of a deceased settlor. However, nothing in this paragraph shall provide standing to bring an action concerning the internal affairs of the trust

to a person whose only claim to the assets of the decedent is as a creditor.

(21) Determining petitions filed pursuant to Section 15687 and reviewing the reasonableness of compensation for legal services authorized under that section. In determining the reasonableness of compensation under this paragraph, the court may consider, together with all other relevant circumstances, whether prior approval was obtained pursuant to Section 15687.

SEC. 28. Section 17203 of the Probate Code is amended to read:

17203. (a) At least 30 days before the time set for the hearing on the petition, the petitioner shall cause notice of hearing to be mailed to all of the following persons:

(1) All trustees.

(2) All beneficiaries, subject to Chapter 2 (commencing with Section 15800) of Part 3.

(3) The Attorney General, if the petition relates to a charitable trust subject to the jurisdiction of the Attorney General.

(b) At least 30 days before the time set for hearing on the petition, the petitioner shall cause notice of the hearing and a copy of the petition to be served in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure on any person, other than a trustee or beneficiary, whose right, title, or interest would be affected by the petition and who does not receive notice pursuant to subdivision (a). The court may not shorten the time for giving notice under this subdivision.

(c) If a person to whom notice otherwise would be given has been deceased for at least 40 days, and no personal representative has been appointed for the estate of that person, and the deceased person's right, title, or interest has not passed to any other person pursuant to Division 8 (commencing with Section 13000) or otherwise, notice may instead be given to the following persons:

(1) Each heir and devisee of the decedent, and all persons named as executors of the will of the decedent, so far as known to the petitioner.

(2) Each person serving as guardian or conservator of the decedent at the time of the decedent's death, so far as known to the petitioner.

SEC. 29. Section 17207 of the Probate Code is repealed.

SEC. 30. Section 19028 of the Probate Code is repealed.

SEC. 31. Section 20123 of the Probate Code is amended to read:

20123. (a) The court, upon making a determination as provided in this article, shall make an order:

(1) Directing the personal representative to charge the prorated amounts against the persons against whom an estate tax has been prorated insofar as the personal representative is in possession of any property or interests of the persons against whom the charge may be made.

(2) Summarily directing all other persons against whom an estate tax has been prorated to make payment of the prorated amounts to the personal representative.

(b) A court order made under this section is a judgment that may be enforced against the persons against whom an estate tax has been prorated.

SEC. 32. Section 20223 of the Probate Code is amended to read:

20223. (a) The court, upon making a determination as provided in this article, shall make an order:

(1) Directing the trustee to charge the prorated amounts against the transferees against whom the generation-skipping transfer tax has been prorated insofar as the trustee is in possession of any property or interests of the transferees against whom the charge may be made.

(2) Summarily directing all other transferees against whom the generation-skipping transfer tax has been prorated to make payment of the prorated amounts to the trustee.

(b) A court order made under this section is a judgment that may be enforced against the persons against whom a generation-skipping transfer tax has been prorated.

SEC. 33. Section 21350 of the Probate Code is amended to read:

21350. (a) Except as provided in Section 21351, no provision, or provisions, of any instrument shall be valid to make any donative transfer to any of the following:

(1) The person who drafted the instrument.

(2) A person who is related by blood or marriage to, is a cohabitant with, or is an employee of, the person who drafted the instrument.

(3) Any partner or shareholder of any law partnership or law corporation in which the person described in paragraph (1) has an ownership interest, and any employee of any such law partnership or law corporation.

(4) Any person who has a fiduciary relationship with the transferor, including, but not limited to, a conservator or trustee, who transcribes the instrument or causes it to be transcribed.

(5) A person who is related by blood or marriage to, is a cohabitant with, or is an employee of a person who is described in paragraph (4).

(6) A care custodian of a dependent adult.

(b) For purposes of this section, "a person who is related by blood or marriage" to a person means all of the following:

(1) The person's spouse or predeceased spouse.

(2) Relatives within the third degree of the person and of the person's spouse.

(3) The spouse of any person described in paragraph (2).

In determining any relationship under this subdivision, Sections 6406, 6407, and Chapter 2 (commencing with Section 6450) of Part 2 of Division 6 shall be applicable.

(c) For purposes of this section, the term "dependent adult" has the meaning set forth in Section 15610.23 of Welfare and Institutions

Code and also includes those persons who (1) are older than age 64 and (2) would be dependent adults, within the meaning of Section 15610.23, if they were between the ages of 18 and 64. The term "care custodian" has the meaning set forth in Section 15610.17 of Welfare and Institutions Code.

SEC. 34. Part 6 (commencing with Section 21600) is added to Division 11 of the Probate Code, to read:

PART 6. FAMILY PROTECTION: OMITTED SPOUSES AND CHILDREN

CHAPTER 1. GENERAL PROVISIONS

21600. This part shall apply to property passing by will through a decedent's estate or by a trust, as defined in Section 82, that becomes irrevocable only on the death of the settlor.

21601. (a) For purposes of this part, "decedent's testamentary instruments" means the decedent's will or revocable trust.

(b) "Estate" as used in this part shall include a decedent's probate estate and all property held in any revocable trust that becomes irrevocable on the death of the decedent.

CHAPTER 2. OMITTED SPOUSES

21610. Except as provided in Section 21611, if a decedent fails to provide in a testamentary instrument for the decedent's surviving spouse who married the decedent after the execution of all of the decedent's testamentary instruments, the omitted spouse shall receive a share in the decedent's estate, consisting of the following property in said estate:

(a) The one-half of the community property that belongs to the decedent under Section 100.

(b) The one-half of the quasi-community property that belongs to the decedent under Section 101.

(c) A share of the separate property of the decedent equal in value to that which the spouse would have received if the decedent had died without having executed a testamentary instrument, but in no event is the share to be more than one-half the value of the separate property in the estate.

21611. The spouse shall not receive a share of the estate under Section 21610 if any of the following is established:

(a) The decedent's failure to provide for the spouse in the decedent's testamentary instruments was intentional and that intention appears from the testamentary instruments.

(b) The decedent provided for the spouse by transfer outside of the estate passing by the decedent's testamentary instruments and the intention that the transfer be in lieu of a provision in said

instruments is shown by statements of the decedent or from the amount of the transfer or by other evidence.

(c) The spouse made a valid agreement waiving the right to share in the decedent's estate.

26112. (a) Except as provided in subdivision (b), in satisfying a share provided by this chapter:

(1) The share will first be taken from the decedent's estate not disposed of by will or trust, if any.

(2) If that is not sufficient, so much as may be necessary to satisfy the share shall be taken from all beneficiaries of decedent's testamentary instruments in proportion to the value they may respectively receive. This value shall be determined as of the date of the decedent's death.

(b) If the obvious intention of the decedent in relation to some specific gift or devise or other provision of a testamentary instrument would be defeated by the application of subdivision (a), the specific devise or gift or provision may be exempted from the apportionment under subdivision (a), and a different apportionment, consistent with the intention of the decedent, may be adopted.

CHAPTER 3. OMITTED CHILDREN

21620. Except as provided in Section 21621, if a decedent fails to provide in a testamentary instrument for a child of decedent born or adopted after the execution of all of the decedent's testamentary instruments, the omitted child shall receive a share in the decedent's estate equal in value to that which the child would have received if the decedent had died without having executed any testamentary instrument.

21621. A child shall not receive a share of the estate under Section 21620 if any of the following is established:

(a) The decedent's failure to provide for the child in the decedent's testamentary instruments was intentional and that intention appears from the testamentary instruments.

(b) The decedent had one or more children and devised or otherwise directed the disposition of substantially all the estate to the other parent of the omitted child.

(c) The decedent provided for the child by transfer outside of the estate passing by the decedent's testamentary instruments and the intention that the transfer be in lieu of a provision in said instruments is show by statements of the decedent or from the amount of the transfer or by other evidence.

21622. If, at the time of the execution of all of decedent's testamentary instruments effective at the time of decedent's death, the decedent failed to provide for a living child solely because the decedent believed the child to be dead or was unaware of the birth of the child, the child shall receive a share in the estate equal in value

to that which the child would have received if the decedent had died without having executed any testamentary instruments.

21623. (a) Except as provided in subdivision (b), in satisfying a share provided by this chapter:

(1) The share will first be taken from the decedent's estate not disposed of by will or trust, if any.

(2) If that is not sufficient, so much as may be necessary to satisfy the share shall be taken from all beneficiaries of decedent's testamentary instruments in proportion to the value they may respectively receive. This value shall be determined as of the date of the decedent's death.

(b) If the obvious intention of the decedent in relation to some specific gift or devise or other provision of a testamentary instrument would be defeated by the application of subdivision (a), the specific devise or gift or provision of a testamentary instrument may be exempted from the apportionment under subdivision (a), and a different apportionment, consistent with the intention of the decedent, may be adopted.

CHAPTER 4. APPLICABILITY

21630. This part does not apply if the decedent died before January 1, 1998. The law applicable prior to January 1, 1998, applies if the decedent died before January 1, 1998.

SEC. 35. Section 10850 of the Welfare and Institutions Code is amended to read:

10850. (a) Except as otherwise provided in this section, all applications and records concerning any individual made or kept by any public officer or agency in connection with the administration of any provision of this code relating to any form of public social services for which grants-in-aid are received by this state from the United States government shall be confidential, and shall not be open to examination for any purpose not directly connected with the administration of that program, or any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any such program. The disclosure of any information which identifies by name or address any applicant for or recipient of these grants-in-aid to any committee or legislative body is prohibited, except as provided in subdivision (b).

(b) Except as otherwise provided in this section, no person shall publish or disclose or permit or cause to be published or disclosed any list of persons receiving public social services. Any county welfare department in this state may release lists of applicants for, or recipients of, public social services, to any other county welfare department or the State Department of Social Services, and these lists or any other records shall be released when requested by any county welfare department or the State Department of Social Services. These lists or other records shall only be used for purposes

directly connected with the administration of public social services. Except for those purposes, no person shall publish, disclose, or use or permit or cause to be published, disclosed, or used any confidential information pertaining to an applicant or recipient.

Any county welfare department and the State Department of Social Services shall provide any governmental entity which is authorized by law to conduct an audit or similar activity in connection with the administration of public social services, including any committee or legislative body so authorized, with access to any public social service applications and records described in subdivision (a) to the extent of the authorization. Those committees, legislative bodies and other entities may only request or use these records for the purpose of investigating the administration of public social services, and shall not disclose the identity of any applicant or recipient except in the case of a criminal or civil proceeding conducted in connection with the administration of public social services.

However, this section shall not prohibit the furnishing of this information to other public agencies to the extent required for verifying eligibility or for other purposes directly connected with the administration of public social services, or to county superintendents of schools or superintendents of school districts only as necessary for the administration of federally assisted programs providing assistance in cash or in-kind or services directly to individuals on the basis of need. Any person knowingly and intentionally violating this subdivision is guilty of a misdemeanor.

Further, in the context of a petition for the appointment of a conservator for a person who is receiving or has received aid from a public agency, as indicated above, or in the context of a criminal prosecution for a violation of Section 368 of the Penal Code both of the following shall apply:

(1) An Adult Protective Services employee or Ombudsman may answer truthfully at any proceeding related to the petition or prosecution, when asked if he or she is aware of information that he or she believes is related to the legal mental capacity of that aid recipient or the need for a conservatorship for that aid recipient. If the Adult Protective Services employee or Ombudsman states that he or she is aware of such information, the court may order the Adult Protective Services employee or Ombudsman to testify about his or her observations and to disclose all relevant agency records.

(2) The court may order the Adult Protective Services employee or Ombudsman to testify about his or her observations and to disclose any relevant agency records if the court has other independent reason to believe that the Adult Protective Services employee or Ombudsman has information that would facilitate the resolution of the matter.

(c) The State Department of Social Services may make rules and regulations governing the custody, use, and preservation of all

records, papers, files, and communications pertaining to the administration of the laws relating to public social services under their jurisdiction. The rules and regulations shall be binding on all departments, officials and employees of the state, or of any political subdivision of the state and may provide for giving information to or exchanging information with agencies, public or political subdivisions of the state, and may provide for giving information to or exchanging information with agencies, public or private, which are engaged in planning, providing or securing social services for or in behalf of recipients or applicants; and for making case records available for research purposes, provided, that the research will not result in the disclosure of the identity of applicants for or recipients of public social services.

(d) Any person, including every public officer and employee, who knowingly secures or possesses, other than in the course of official duty, an official list or a list compiled from official sources, published or disclosed in violation of this section, of persons who have applied for or who have been granted any form of public social services for which state or federal funds are made available to the counties is guilty of a misdemeanor.

(e) This section shall not be construed to prohibit an employee of a county welfare department from disclosing confidential information concerning a public social services applicant or recipient to a state or local law enforcement agency investigating or gathering information regarding a criminal act committed in a welfare department office, a criminal act against any county or state welfare worker, or any criminal act witnessed by any county or state welfare worker while involved in the administration of public social services at any location. Further, this section shall not be construed to prohibit an employee of a county welfare department from disclosing confidential information concerning a public social services applicant or recipient to a state or local law enforcement agency investigating or gathering information regarding a criminal act intentionally committed by the applicant or recipient against any off-duty county or state welfare worker in retaliation for an act performed in the course of the welfare worker's duty when the person committing the offense knows or reasonably should know that the victim is a state or county welfare worker. These criminal acts shall include only those which are in violation of state or local law. Disclosure of confidential information pursuant to this subdivision shall be limited to the applicant's or recipient's name, physical description, and address.

(f) The provisions of this section shall be operative only to the extent permitted by federal law and shall not apply to, but exclude, Chapter 7 (commencing with Section 14000) of this division, entitled "Basic Health Care", and for which a grant-in-aid is received by the state under Title XIX of the Social Security Act.

SEC. 36. Section 14100.2 of the Welfare and Institutions Code is amended to read:

14100.2. (a) All types of information, whether written or oral, concerning a person, made or kept by any public officer or agency in connection with the administration of any provision of this chapter, Chapter 8 (commencing with Section 14200), or Chapter 8.7 (commencing with Section 14520) and for which a grant-in-aid is received by this state from the United States government pursuant to Title XIX of the Social Security Act shall be confidential, and shall not be open to examination other than for purposes directly connected with the administration of the Medi-Cal program. However, in the context of a petition for the appointment of a conservator for a person with respect to whom such information is made or kept, and in the context of a criminal prosecution for a violation of Section 368 of Penal Code with respect to such a person, all of the following shall apply:

A public officer or employee of any such agency may answer truthfully, at any proceeding related to the petition or prosecution, when asked if he or she is aware of information that he or she believes is related to the legal mental capacity of that aid recipient or the need for a conservatorship for that aid recipient. If the officer or employee states that he or she is aware of this information, the court may order the officer or employee to testify about his or her observations and to disclose any relevant agency records if the court has an other independent reason to believe that the officer or employee has information that would facilitate the resolution of the matter.

(b) Except as provided in this section and to the extent permitted by federal law or regulation all information about applicants and recipients as provided for in subdivision (a) to be safeguarded includes, but is not limited to, names and addresses, medical services provided, social and economic conditions or circumstances, agency evaluation of personal information, and medical data, including diagnosis and past history of disease or disability.

(c) Purposes directly connected with the administration of the Medi-Cal program, Chapter 8 (commencing with Section 14200), or Chapter 8.7 (commencing with Section 14520) encompass those administrative activities and responsibilities in which the State Department of Health Services and its agents are required to engage to insure effective program operations. These activities include, but are not limited to: establishing eligibility and methods of reimbursement; determining the amount of medical assistance; providing services for recipients; conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the Medi-Cal program; and conducting or assisting a legislative investigation or audit related to the administration of the Medi-Cal program.

(d) Any officer, agent, or employee of the State Department of Health Services or of any public agency shall provide the Joint

Legislative Audit Committee and the Auditor General with any and all the information described in subdivision (b) within a reasonable period of time as determined by the committee in consultation with the State Department of Health Services, after receipt of a request from the committee approved by a majority of the members of the committee. The Joint Legislative Audit Committee and the Auditor General may use such information only for the purpose of investigating or auditing the administration of the Medi-Cal program, Chapter 8 (commencing with Section 14200), or Chapter 8.7 (commencing with Section 14520), and shall not use such information for commercial or political purposes. In any case where disclosure of information is authorized by this section, the Joint Legislative Audit Committee or the Auditor General shall not disclose the identity of any applicant or recipient, except in the case of a criminal or civil proceeding conducted in connection with the administration of the Medi-Cal program.

(e) The access to information provided in subdivision (d) shall be permitted only to the extent and under the conditions provided by federal law and regulations governing the release of such information.

(f) The State Department of Health Services may make rules and regulations governing the custody, use and preservation of all records, papers, files and communications pertaining to the administration of the laws relating to the Medi-Cal program, Chapter 8 (commencing with Section 14200), or Chapter 8.7 (commencing with Section 14520). The rules and regulations shall be binding on all departments, officials and employees of the state, or of any political subdivision of the state and may provide for giving information to or exchanging information with agencies, public or political subdivisions of the state, and may provide for giving information to or exchanging information with agencies, public or private, which are engaged in planning, providing or securing such services for or in behalf of recipients or applicants; and for making case records available for research purposes, provided, that such research will not result in the disclosure of the identity of applicants for or recipients of such services.

(g) Upon request, the department shall release to the negotiator established pursuant to Article 2.6 (commencing with Section 14081) all computer tapes and any modifications thereto, including paid claims, connected with the administration of the Medi-Cal program which are in the possession or under the control of the department, including tapes prepared prior to the effective date of this section.

To ensure compliance with federal law and regulations, the department shall make the minimum necessary modifications to its computer tapes prior to releasing the tapes to the negotiator in order to assure the confidentiality of the identity of all applicants for, or recipients of, those services. The department shall not make any

modifications to paid claims tapes which affect information regarding beneficiaries' aid categories or counties of origin.

(h) Any person who knowingly releases or possesses confidential information concerning persons who have applied for or who have been granted any form of Medi-Cal benefits or benefits under Chapter 8 (commencing with Section 14200) or Chapter 8.7 (commencing with Section 14520) for which state or federal funds are made available in violation of this section is guilty of a misdemeanor.

SEC. 37. Section 15610.30 of the Welfare and Institutions Code is amended to read:

15610.30. (a) "Fiduciary abuse" means a situation in which one or both of the following apply:

(1) A person, including, but not limited to, one who has the care or custody of, or who stands in a position of trust to, an elder or a dependent adult, takes, secretes, or appropriates their money or property, to any wrongful use, or for any purpose not in the due and lawful execution of his or her trust.

(2) A situation in which all of the following conditions are satisfied:

(A) An elder (who would be a dependent adult if he or she were between the ages of 18 and 64) or dependent adult or his or her representative requests that a third party transfer to the elder or dependent adult or to his or her representative, or to a court appointed receiver, property that meets all of the following criteria:

(i) The third party holds or has control of the property.

(ii) The property belongs to, or is held in express trust, constructive trust or resulting trust for, the elder or dependent adult.

(iii) The ownership or control of the property was acquired in whole or in part by the third party or someone acting in concert with the third party from the elder or dependent adult at a time when the elder or dependent adult was a dependent adult or was a person who would have been a dependent adult if he or she had then been between the ages of 18 and 64.

(B) Despite the request for the transfer of property, the third party without good cause either continues to hold the property or fails to take reasonable steps to make the property readily available to the elder or dependent adult, to his or her representative or to a court appointed receiver.

(C) The third party committed acts described in this paragraph in bad faith. A third party shall be deemed to have acted in bad faith if the third party either knew or should have known that the elder or dependent adult had the right to have the property transferred or made readily available. For purposes of this subdivision, a third party should have known of this right if, on the basis of the information received by the elder or dependent adult, or the elder or dependent adult's representative, it is obvious to a reasonable person that the elder or dependent adult had this right.

(b) For the purpose of this section, the term "third party" means a person who holds or has control of property that belongs to or is held in express trust, constructive trust or resulting trust for an elder or dependent adult.

(c) For the purposes of this section, the term "representative" means an elder or dependent adult's conservator of the estate, or attorney-in-fact acting within the authority of the power of attorney.

SEC. 38. Section 15657 of the Welfare and Institutions Code is amended to read:

15657. Where it is proven by clear and convincing evidence that a defendant is liable for physical abuse as defined in Section 15610.63, neglect as defined in Section 15610.57, or fiduciary abuse as defined in Section 15610.30, and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse, in addition to all other remedies otherwise provided by law:

(a) The court shall award to the plaintiff reasonable attorney's fees and costs. The term "costs" includes, but is not limited to, reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim brought under this article.

(b) The limitations imposed by Section 337.34 of the Code of Civil Procedure on the damages recoverable shall not apply. However, the damages recovered shall not exceed the damages permitted to be recovered pursuant to subdivision (b) of Section 3333.2 of the Civil Code.

(c) The standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding the imposition of punitive damages on an employer based upon the acts of an employee shall be satisfied before any damages or attorney's fees permitted under this section may be imposed against an employer.

CHAPTER 725

An act relating to parks and recreation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 6, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Pursuant to Sections 5096.96 and 5096.177 of the Public Resources Code, the City of Compton may convert a three-acre parcel of land known as West Park, which is located in the City of Compton, and which was acquired and developed with state funds that were granted to the City of Compton pursuant to the State Beach, Park, Recreational, and Historical Facilities Bond Act of 1974 (Chapter 1.67 (commencing with Section 5096.71) of Division 5 of

the Public Resources Code) and the California Parklands Act of 1980 (Chapter 1.69 (commencing with Section 5096.141) of Division 5 of the Public Resources Code), if the City of Compton uses the proceeds of the sale of West Park to acquire and develop substitute parklands at a new site located at 2701 Alondra Boulevard in the City of Compton.

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 allow the City of Compton to sell West Park, in accordance with the conditions prescribed in Section 1 of this act, as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 726

An act to amend Sections 56621, 67055, 69022, 69044, 69051, 69081, 69085, 69091, 74719, 74721, 74737, 74785, 74786, 78623, and 78640 of, to amend and renumber Sections 69029 and 69084 of, to add Sections 63903, 69029, and 74721.5 to, and to repeal Section 69017 of, the Food and Agricultural Code, relating to agriculture.

[Approved by Governor October 6, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 56621 of the Food and Agricultural Code is amended to read:

56621. It is a violation of this chapter if a licensee fails, neglects, or refuses to collect or remit any assessments that have been levied in accordance with the assessment provisions of Article 10 (commencing with Section 58921) of Chapter 1 or Article 12 (commencing with Section 59941) of Chapter 2 of Part 2 of Division 21, or Article 8 (commencing with Section 64691) of Chapter 2, Article 5 (commencing with Section 66621) of Chapter 4, Article 6 (commencing with Section 67101) of Chapter 5, Article 6 (commencing with Section 68101) of Chapter 6, Article 6 (commencing with Section 69081) of Chapter 7, Article 6 (commencing with Section 72101) of Chapter 10, Article 6 (commencing with Section 75131) of Chapter 13, Article 6 (commencing with Section 76141) of Chapter 14, Article 6 (commencing with Section 78285) of Chapter 21, or Article 6 (commencing with Section 78700) of Chapter 24, of Part 2 of Division 22.

SEC. 2. Section 63903 is added to the Food and Agricultural Code, to read:

63903. In addition to the authority granted to any commission by Part 2 (commencing with Section 64001), those commissions may commence or participate in administrative and civil actions relative to the activities of the commission.

SEC. 3. Section 67055 of the Food and Agricultural Code is amended to read:

67055. The term of office of all commissioners, except the ex officio member, shall be for two years from the date of their election and until their successors are qualified; provided, however, that of the first members of the commission from each district, one shall serve for one year, and one shall serve for two years, with the determination of term of each such member to be made by lot. The same selection procedure shall apply to the two cooperative and two independent handler members. Subsequent to the election of the first members of the commission, the terms of the commissioners shall continue to be staggered, as provided in this section. Terms of office of each commissioner shall be limited to four consecutive terms.

SEC. 4. Section 69017 of the Food and Agricultural Code is repealed.

SEC. 5. Section 69022 of the Food and Agricultural Code is amended to read:

69022. "Processor" and "first handler" are synonymous and mean any person engaged, within this state, in the operation of hulling and drying pistachios that he or she has produced or purchased or acquired from a producer, or that he or she is hulling and drying on behalf of a producer, whether as owner, agent, employee, broker, or otherwise. "Processor" does not include, however, a retailer, except a retailer who purchases or acquires from, or hulls and dries on behalf of, any producer, pistachios that were not previously subject to regulation by the commission. When the processor is a corporation, all the directors and officers of the corporation in their capacity as individuals are included, and any liability for failure to collect or make payment of assessments to which a corporate processor may be subject pursuant to this chapter includes the same liability for each individual director or officer of the corporation.

SEC. 6. Section 69029 of the Food and Agricultural Code is amended and renumbered to read:

69030. When the secretary is required to concur in a decision of the commission, the secretary shall indicate his or her response to the commission within 15 working days from notification of that decision. The response may be a request that additional information be provided.

SEC. 7. Section 69029 is added to the Food and Agricultural Code, to read:

69029. "Producer-supplier" means any producer who engages in the operation of selling, marketing, or distributing pistachios that he or she has produced, or has purchased or acquired from a processor.

It does not, however, include a retailer, except a retailer who purchases or acquires from, or sells, markets, or distributes on behalf of any producer, pistachios that were not previously subject to regulation by the commission. When the producer-supplier 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 submit records pursuant to a requirement to which a corporate producer-supplier may be subject pursuant to this chapter shall include identical liability upon each individual director and officer of the corporation.

SEC. 8. Section 69044 of the Food and Agricultural Code is amended to read:

69044. The state is not liable for the acts of the commission or its contracts. Payments of all claims arising by reason of the administration of this chapter or acts of the commission shall be limited to the funds collected by the commission. No member of the commission or alternate member, or any employee or agent thereof, is personally liable on the contracts of the commission and no commissioner, alternate member, or employee of the commission is responsible individually in any way to any producer, processor, producer-supplier, or 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 commissioner or alternate member shall be held responsible individually for any act or omission of any member of the commission. The liability of the commissioners is several and not joint, and no commissioner is liable for the default of any other commissioner.

SEC. 9. Section 69051 of the Food and Agricultural Code is amended to read:

69051. The powers and duties of the commission, subject to Sections 69032 and 69033, include, but are not limited to, all of the following:

(a) To adopt and, from time to time, alter, rescind, modify, and amend all proper and necessary bylaws, rules, regulations, and orders for carrying out this chapter, including rules for appeals from any bylaw, rule, regulation, or order of the commission. The adoption, alteration, rescission, modification, or amendment of any bylaw, rule, regulation, or order implementing the brand-credit advertising program authorized pursuant to subdivision (i) is subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) To administer and enforce this chapter, and to do and perform all acts and exercise all powers incidental to, or in connection with, or determined reasonably necessary for, the proper or advisable effectuation of the purposes of this chapter.

(c) To appoint its own officers, including a chairperson, one or more vice chairpersons, and any other officers as it determines

necessary. The officers have the powers and duties delegated to them by the commission.

(d) To employ a manager to serve at the pleasure of the commission as president and chief executive officer of the commission, and other personnel, including legal counsel, that are necessary to carry out this chapter. The commission may retain a management firm or the staff from any board, commission, or committee of the state to perform the functions prescribed by this subdivision under the control of the commission. If the manager engages in any conduct that the secretary determines is not in the public interest or that is in violation of this chapter, the secretary shall notify the commission of the conduct and request that corrective and, if appropriate, disciplinary action be taken by the commission. If the commission fails or refuses to correct the situation or to take disciplinary action satisfactory to the secretary, the secretary may suspend or discharge the manager.

(e) To fix the compensation for all employees of the commission.

(f) To appoint committees composed of both members and nonmembers of the commission, such as a processor advisory committee, to advise the commission in carrying out this chapter.

(g) To establish offices and incur expenses, invest funds in the permissible investments as specified in Section 58939, enter into any and all contracts and agreements, and create liabilities and borrow funds in advance of receipt of assessments as may be necessary, in the opinion of the commission, for the proper administration and enforcement of this chapter and the performance of its duties.

(h) To keep accurate books, records, and accounts of all of its dealings, which books, records, and accounts shall be subject to an annual audit by an auditing firm selected by the commission with the concurrence of the secretary. The audit shall be made a part of an annual report to all producers of pistachios, copies of which shall also be submitted to the Legislature and the department. In addition, the secretary may, as the secretary determines necessary, conduct or cause to be conducted a fiscal and compliance audit of the commission. The Department of Finance may audit books, records, and accounts of the commission at any time.

(i) To promote the sale of pistachios by advertising and other promotional means, including cost-sharing advertising of pistachios or other complementary products and brand-credit advertising, for the purpose of maintaining and expanding present markets and creating new and larger intrastate, interstate, and foreign markets for pistachios, and to educate and instruct the public with respect to the uses, healthful properties, and nutritional value of pistachios. Any decision to implement a brand-credit advertising program shall be ratified by a vote of producers conducted pursuant to Section 69062.

(j) To require processors and producer-suppliers to provide records and other information necessary for the commission to carry out the purposes of this chapter, including, but not limited to, records

and information regarding inventories, shipment destinations, and related information. Such records and information shall be preserved by the processor or producer-supplier 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.

(k) To educate and instruct the wholesale and retail trade with respect to proper methods of handling and selling pistachios, make market surveys and analyses, and present facts to, and negotiate with, state, federal, and foreign agencies on matters that affect the marketing of pistachios.

(*l*) To make, in the name of the commission, contracts to render service in formulating and conducting plans and programs, and any other contracts or agreements as the commission may determine necessary for the promotion of the sale of pistachios.

(m) To conduct and contract with others to conduct scientific research, including the study, analysis, dissemination, and accumulation of information obtained from the research or elsewhere, respecting cultural and production practices, and marketing and distribution of pistachios. In connection with the research, the commission may accept contributions of, or match, private, state, or federal funds that may be available for these purposes, and employ or make contributions of funds to other persons or state or federal agencies conducting the research.

(n) To publish and distribute, without charge, a bulletin or other communication for dissemination of information relating to the pistachio industry to producers, processors, and producer-suppliers.

(o) To establish an assessment rate to defray operating costs of the commission. Any assessment rate established pursuant to this chapter may be modified in accordance with Section 69081.

(p) To establish an annual budget according to accepted accounting practices. The budget shall be concurred in by the secretary prior to disbursement of funds, except for disbursements made pursuant to subdivision (e).

(q) To submit to the secretary, for his or her concurrence, an annual statement of contemplated activities authorized under this chapter, including advertising, promotion, marketing research, and production research.

(r) To administer any governmental program establishing quality standards for the pistachio industry upon request of an authorized agent of a governmental agency.

SEC. 10. Section 69081 of the Food and Agricultural Code is amended to read:

69081. The commission, not later than October 1 of each year, shall establish the assessment for the marketing season that begins September 1 and continues through August 31 of the following year, which shall not exceed 5 percent of the average price received by producers, computed on a per pound basis or computed in any other manner determined by the commission to be reasonably equivalent

to the per pound computation. The commission may revise the assessment established prior to October 1 of each year if it determines, based on information including crop volume, that the action is necessary, and if the revision does not exceed the assessment limitations specified in this section and the modification is made prior to the date established by the commission for payment of the assessment.

SEC. 11. Section 69084 of the Food and Agricultural Code is amended and renumbered to read:

69045. All proprietary information obtained by the commission or the secretary from producers, processors, or producer-suppliers shall be confidential and shall not be disclosed except when required by a court order after a hearing in a judicial proceeding involving this chapter. Information on volume shipments, crop value, and any other related information that is required for reports to governmental agencies, financial reports to the commission or aggregate sales and inventory information, and any other information that the processors or producer-suppliers request from the commission to receive in total, excluding individual processor or producer-supplier information, may be disclosed by the commission.

SEC. 12. Section 69085 of the Food and Agricultural Code is amended to read:

69085. Assessments shall be upon the producer. The first handler of pistachios being assessed shall deduct the assessment from amounts paid by him or her to the producer, or shall collect the assessment from 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.

SEC. 13. Section 69091 of the Food and Agricultural Code is amended to read:

69091. It is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding five hundred dollars ($500), or by both such fine and imprisonment, for any person to do any of the following:

(a) Willfully to render or furnish a false report, statement, or record required by the commission.

(b) When engaged in the processing or marketing of pistachios or in the wholesale or retail trade of pistachios, to fail or refuse to furnish to the commission or its duly authorized agents, upon request, information concerning the name and address of the persons from whom he or she has received pistachios and the quantity so received, or any other report, statement, or record required by the commission.

(c) Secrete, destroy, or alter records required to be kept under the provisions of this chapter.

SEC. 14. Section 74719 of the Food and Agricultural Code is amended to read:

74719. "Grape rootstock nursery" or "nursery" means any person in this state which operates under a California state nursery license and grows grape rootstock for commercial use or distribution.

SEC. 14.5. Section 74721 of the Food and Agricultural Code is amended to read:

74721. "Invoicable unit" means any rootstock cutting, or rooted rootstock cutting, or grafted grape rootstock that is used or distributed by a nursery for commercial purposes.

SEC. 15. Section 74721.5 is added to the Food and Agricultural Code, to read:

74721.5. "Distribute" means to sell or otherwise transfer any rootstock cutting, rooted rootstock cutting, or grafted grape rootstock for commercial purposes.

SEC. 16. Section 74737 of the Food and Agricultural Code is amended to read:

74737. Any board member and his or her alternate member on the commission shall be an owner of a grape rootstock nursery or representative of an owner who has a financial interest in producing, or causing to be produced, grape rootstock for commercial use or distribution. Qualifications of grape rootstock nursery board members and their alternate members shall be maintained during their entire term of office.

SEC. 16.5. Section 74785 of the Food and Agricultural Code is amended to read:

74785. (a) The commission shall establish the assessment for the following marketing year not later than April 1 of each year, or as soon thereafter as is possible.

(b) The assessment for the 1992–93 marketing year shall not exceed twenty-five dollars ($25) per bearing acreage of grape rootstock and 1 percent per invoicable unit of grape rootstock used or distributed for commercial purposes. Thereafter, the assessment shall not exceed fifty dollars ($50) per bearing acreage of grape rootstock and two cents ($0.02) per invoicable unit of grape rootstock used or distributed for commercial purposes.

(c) A fee greater than the amount specified in subdivision (b) may not be charged unless approved pursuant to procedures specified in Section 74771.

SEC. 16.6. Section 74786 of the Food and Agricultural Code is amended to read:

74786. Every nursery, including nurseries exempt from the payment of assessments, shall keep a complete and accurate record of its acreage of grape rootstock and its grape rootstock used or distributed for commercial purposes. The records shall be in simple form and contain information as the commission shall prescribe. The records shall be retained by the nursery for five 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. 17. Section 78623 of the Food and Agricultural Code is amended to read:

78623. "Districts" shall consist of the following:

(a) District 1 consists of Imperial and Riverside Counties.

(b) District 2 consists of Los Angeles, Orange, San Diego, San Luis Obispo, Santa Barbara, and Ventura Counties.

(c) District 3 consists of Baja California (Mexico).

(d) District 4 consists of Fresno, Kern, Kings, and Tulare Counties.

(e) District 5 consists of Monterey County.

(f) District 6 consists of Madera, Merced, and Stanislaus Counties.

(g) District 7 consists of San Joaquin County.

(h) District 8 consists of all counties in the State of California.

The boundaries of any district may be changed by a two-thirds vote of the commission, which is concurred in by the secretary. These boundaries need not coincide with county lines.

SEC. 18. Section 78640 of the Food and Agricultural Code is amended to read:

78640. There is in the state government the California Tomato Commission. The commission shall be composed of 10 producers, seven handlers, and may include one public member, at the discretion of the commission.

(a) Producers within the respective districts shall elect one producer from District 1, one producer from District 2, one producer from District 4, one producer from District 5, one producer from District 6, one producer from District 7, and four at-large producers from District 8.

(b) Handlers within Districts 1 and 2, and Districts 4 to 7, inclusive, shall elect one handler from each district. Handlers in California who exclusively handle tomatoes produced in District 3 shall elect one handler. An individual serving on the commission as a representative of District 3 shall be a United States citizen.

(c) The public member shall be appointed to the commission by the secretary from nominees recommended by the commission.

(d) The secretary and other appropriate individuals, as determined by the commission, shall be ex officio members of the commission.

SEC. 19. 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 727

An act to amend Section 17065 of, and to add Section 12846.5 to, the Food and Agricultural Code, and to amend Section 110050 of, and to amend and repeal Section 110485 of, the Health and Safety Code, relating to food and agriculture.

[Approved by Governor October 6, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 12846.5 is added to the Food and Agricultural Code, to read:

12846.5. Sufficient moneys from the Department of Pesticide Regulation Fund, as determined by the Director of Pesticide Regulation, shall be transferred to the Food Safety Account for the purposes of Section 12846, except that no fees or assessments deposited into the fund shall be transferred to the account and used for nonregulatory purposes.

SEC. 1.5. Section 17065 of the Food and Agricultural Code is amended to read:

17065. (a) If the owner is not found, and the estimated value of the animal exceeds two hundred twenty-five dollars ($225), the secretary shall cause a notice of the taking up of, and intent to sell the animal to be prepared. The notice may be distributed to the county department of agriculture and to all sales yards in the state. The secretary may limit distribution of the notice, however, to those sales yards that deal in the same type of animal as the animal that is taken up.

(b) The notice shall be posted for a period of 14 days on a bulletin board in each office of the Bureau of Livestock Identification.

(c) In addition to posting and distributing the notice, the secretary shall periodically publish a list of the animals for which notice was given pursuant to this section, including the brands and descriptions of the branded animals and descriptions of the unbranded animals in the classified section of a livestock industry publication that is in general circulation throughout the State of California.

SEC. 2. Section 110050 of the Health and Safety Code is amended to read:

110050. The Food Safety Fund is hereby created as a special fund in the State Treasury. All moneys collected by the department under Sections 110470 and 110485 and under Article 7 (commencing with Section 110810) of Chapter 5 shall be deposited in the fund, for use

by the department, upon appropriation by the Legislature, for the purposes of providing funds necessary to carry out and implement the inspection provisions of this part relating to food, the provisions relating to education and training in the prevention of microbial contamination pursuant to Section 110485, and the registration provisions of Article 7 (commencing with Section 110810) of Chapter 5.

SEC. 3. Section 110485 of the Health and Safety Code is amended to read:

110485. (a) Every person who is engaged in the manufacture, packing, or holding of processed food in this state shall pay a food safety fee of one hundred dollars ($100) to the department in addition to any fees paid pursuant to Section 110470.

(b) Revenue received pursuant to this section shall be deposited in the Food Safety Fund created pursuant to Section 110050. A penalty of 10 percent per month shall be added to any food safety fee not paid when due.

(c) Upon appropriation, the food safety fees deposited in the Food Safety Fund shall be used by the department to assist in developing and implementing education and training programs related to food safety. These programs shall be developed in consultation with representatives of the food processing industry. Implementation shall include education and training in the prevention of microbial contamination.

(d) This section does not apply to companies exclusively involved in flour milling, dried bean processing, or in the drying or milling of rice, or to those individual registrants the director determines should not be assessed because substantial economic hardship would result to those registrants. For the purposes of this subdivision, the substantial hardship exemption shall be extended only to registrants whose wholesale gross annual income from the registered business is twenty thousand dollars ($20,000) or less.

(e) 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. The Legislature finds and declares that it is in the public interest for the state government to take an active and cooperative role in maintaining the safety and wholesomeness of processed agricultural products grown within the state. It is the intent of the Legislature to direct the State Department of Health Services to expand development of microbial-based education and training programs related to food safety and to assist processors and other food handlers establish effective food safety practices. In this effort, the State Department of Health Services shall work in cooperation with the Department of Food and Agriculture to share information relating to food safety. All segments of agriculture will benefit from a greater awareness and understanding of the importance of food safety practices that prevent microbial contamination. In addition,

the microbial-based education and training programs will benefit California consumers by educating and assisting the food industry in using the best available food safety technologies.

CHAPTER 728

An act to amend Section 1550.5 of the Health and Safety Code, and to amend Section 11462.06 of the Welfare and Institutions Code, relating to community care facilities.

[Approved by Governor October 6, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 1550.5 of the Health and Safety Code is amended to read:

1550.5. The director may temporarily suspend any license prior to any hearing when, in the opinion of the director, the action is urgent to protect residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety. The director shall serve the licensee with the temporary suspension order, a copy of available discovery and other relevant evidence in the possession of the department, including, but not limited to, affidavits, declarations, and any other evidence upon which the director relied in issuing the temporary suspension order, the names of the department's witnesses, and the effective date of the temporary suspension and at the same time shall serve the licensee with an accusation.

(a) (1) The department shall notify the licensee, upon service of an order of temporary license suspension, of the licensee's right to an interim hearing on the order. The department shall also provide the licensee with a form and appropriate information for the licensee's use in requesting an interim hearing. The department shall also notify the licensee, upon service, of the licensee's independent right to seek review of the order by the superior court pursuant to Section 1085 of the Code of Civil Procedure.

(2) (A) The licensee may request an interim hearing by mailing or delivering a written request to the Office of Administrative Hearings. The licensee shall mail or deliver the request to the address or location specified on the request form served with the order. The licensee shall mail or deliver the request within five days after service of the order. Upon receipt of a timely request for an interim hearing, the Office of Administrative Hearings shall set a hearing date and time which shall be within 10 working days of the office's receipt of the request. The Office of Administrative Hearings shall promptly notify the licensee of the date, time, and place of the hearing. The

licensee's request for an interim hearing shall not stay the operation of the order.

(B) Nothing in this section precludes a licensee from proceeding directly to a full evidentiary hearing or from seeking review of the temporary suspension order by the superior court without first requesting an interim hearing. Nothing in this section requires resolution of the interim hearing prior to review of the temporary suspension order by the superior court. The relief that may be ordered is a stay of the temporary suspension order.

(3) (A) An interim hearing shall be held before an administrative law judge of the Office of Administrative Hearings. The interim hearing shall be held at the regional office of the Office of Administrative Hearings having jurisdiction over the location of the facility.

(B) For purposes of the interim hearing conducted pursuant to this section, the licensee and department shall, at a minimum, have the following rights:

(i) To be represented by counsel.

(ii) To have a record made of the proceedings, copies of which may be obtained by the licensee upon payment of reasonable charges associated with the record.

(iii) To present written evidence in the form of relevant declarations, affidavits, and documents. No later than five working days prior to the interim hearing, the department and the respondent shall serve the opposing party, by overnight delivery or facsimile transmission, with any additional available pertinent discovery that the department or respondent will present at the hearing and that was not provided to the licensee at the time the temporary suspension order was issued. The additional discovery shall include, but not be limited to, affidavits, declarations, and the names of witnesses who will testify at the full evidentiary hearing. The department and the respondent shall have a continuing obligation to exchange discovery as described in this section, up to and including the day of the interim hearing. There shall be no oral testimony at the interim hearing.

(iv) In lieu of an affidavit by an alleged victim named in the accusation, the department and the respondent shall be permitted, at the discretion of the administrative law judge, to introduce at the interim hearing hearsay evidence as to any statement made by the alleged victim as if the alleged victim executed an affidavit. In deciding whether the hearsay statement should be admitted as evidence in the interim hearing, the administrative law judge shall consider the circumstances that would indicate the trustworthiness of the statement.

(v) To present oral argument.

(C) Consistent with the standards of proof applicable to a preliminary injunction entered under Section 527 of the Code of Civil Procedure, the administrative law judge shall vacate the temporary

suspension order where, in the exercise of discretion, the administrative law judge concludes both of the following:

(i) There is a reasonable probability that the licensee will prevail in the underlying action.

(ii) The likelihood of physical or mental abuse, abandonment, or other substantial threat to the health or safety of residents or clients in not sustaining the order does not outweigh the likelihood of injury to the licensee in sustaining the order.

(D) The interim hearing shall be reported or recorded pursuant to subdivision (d) of Section 11512 of the Government Code.

(4) The administrative law judge shall issue a verbal interim decision at the conclusion of the interim hearing which sustains or vacates the order. The administrative law judge shall issue a written interim decision within five working days following the conclusion of the interim hearing. The written interim decision shall include findings of fact and a conclusion articulating the connection between the evidence produced at the hearing and the decision reached.

(5) The interim decision shall be subject to review only pursuant to Section 1094.5 of the Code of Civil Procedure. The department or the licensee may file a petition for that review. A petition for review under Section 1094.5 of the Code of Civil Procedure shall be heard by the court within 10 days of its filing and the court shall issue its judgment on the petition within 10 days of the conclusion of the hearing.

(6) The department may proceed with the accusation as otherwise provided by this section and Section 1551 notwithstanding an interim decision by the administrative law judge that vacates the order of temporary license suspension.

(b) Upon receipt of a notice of defense to the accusation by the licensee, the director shall, within 15 days, set the matter for a full evidentiary hearing, and the hearing shall be held as soon as possible but not later than 30 days after receipt of the notice. The temporary suspension shall remain in effect until the time the hearing is completed and the director has made a final determination on the merits, unless it is earlier vacated by interim decision of the administrative law judge or a superior court judge. However, the temporary suspension shall be deemed vacated if the director fails to make a final determination on the merits within 30 days after the original hearing has been completed.

SEC. 2. Section 11462.06 of the Welfare and Institutions Code is amended to read:

11462.06. (a) For purposes of the administration of this article, including the setting of group home rates, the department shall deem the reasonable costs of leases for shelter care for foster children to be allowable costs. Reimbursement of shelter costs shall not exceed 12 percent of the fair market value of owned, leased, or rented buildings, including any structures, improvements, edifices, land, grounds, and other similar property that is owned, leased, or rented by the group

home and that is used for group home programs and activities, exclusive of idle capacity and capacity used for nongroup home programs and activities. Shelter costs shall be considered reasonable in relation to the fair market value limit as described in subdivision (c). Allowable costs of affiliated leases (1) shall be subject to a review by the Charitable Trust Section of the Department of Justice as specified by Chapter 15 (commencing with Section 999) of Division 1 of Title 11 of the California Code of Regulations and (2) shall be permitted to the extent allowed by federal law for federal financial participation.

(b) Effective July 1, 1998, an approval letter from the Charitable Trust Section of the Department of Justice shall be required for approval of shelter costs that result from self-dealing transactions, as defined in Section 5233 of the Corporations Code.

(c) For purposes of this section, fair market value of leased property shall be determined by either of the following methods, as chosen by the provider:

(1) The market value shown on the last tax bill for the cost reporting period.

(2) The market value determined by an independent appraisal. The appraisal shall be performed by a qualified, professional appraiser who, at a minimum, meets standards for appraisers as specified in Chapter 6.5 (commencing with Section 3500) of Title 10 of the California Code of Regulations. The appraisal shall not be deemed independent if performed under a less-than-arms-length agreement, or if performed by a person or persons employed by, or under contract with, the group home for purposes other than performing appraisals, or by a person having a material interest in any group home which receives foster care payments. If the department believes an appraisal does not meet these standards, the department shall give its reasons in writing to the provider and provide an opportunity for appeal.

(d) (1) The department may adopt emergency regulations in order to implement this section, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) The adoption of emergency regulations pursuant to this section shall be deemed to be an emergency and considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, or general welfare.

(3) Emergency regulations adopted pursuant to this section shall be exempt from the review and approval of the Office of Administrative Law.

(4) The emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the

Secretary of State and publication in the California Code of Regulations.

CHAPTER 729

An act to amend Section 138.6 of the Labor Code, relating to workers' compensation.

[Approved by Governor October 6, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 138.6 of the Labor Code is amended to read:

138.6. (a) The administrative director, in consultation with the Insurance Commissioner and the Workers' Compensation Insurance Rating Bureau, shall develop a cost-efficient workers' compensation information system, which shall be administered by the division. The administrative director shall adopt regulations specifying the data elements to be collected by electronic data interchange.

(b) The information system shall do the following:

(1) Assist the department to manage the workers' compensation system in an effective and efficient manner.

(2) Facilitate the evaluation of the efficiency and effectiveness of the benefit delivery system.

(3) Assist in measuring how adequately the system indemnifies injured workers and their dependents.

(4) Provide statistical data for research into specific aspects of the workers' compensation program.

(c) The data collected electronically shall be compatible with the Electronic Data Interchange System of the International Association of Industrial Accident Boards and Commissions. The director shall issue a report on the development of the system, and recommendations for any necessary legislative action, no later than July 1, 1995, and shall, upon request, make the report available to the Governor, the Legislature, and the public.

CHAPTER 730

An act to amend Section 16946 of the Welfare and Institutions Code, relating to human services.

[Approved by Governor October 6, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 16946 of the Welfare and Institutions Code is amended to read:

16946. (a) The Hospital Services Account portion of each county's allocation pursuant to Sections 16932 and 16941 shall be divided into two amounts by:

(1) Multiplying the Hospital Services Account funding portion by the percentage specified in paragraph (5) of subdivision (c) of Section 16945.

(2) Multiplying the amount of the Hospital Services Account funding portion by the percentage specified in paragraph (6) of subdivision (c) of Section 16945.

(b) The amount of each county's Hospital Services Account funding portion calculated in paragraph (1) of subdivision (a) shall be used for payment or support of services provided on or after July 1, 1989, by noncounty hospitals. Beginning in the 1991–92 fiscal year and annually thereafter, these amounts shall be reduced by dividing each county's amount by the total amount for all counties, multiplied by the sum of twelve million dollars ($12,000,000). This amount for each county shall be further divided into two equal parts, as follows:

(1) (A) The first part shall be allocated to each noncounty hospital within a county in amounts determined by multiplying the percentages specified in paragraph (7) of subdivision (c) of Section 16945 by the amount of the first part, and may be used for payment or support of services provided by noncounty hospitals to any eligible patient treated at any time during the fiscal year of the allocation.

(B) Funds distributed during fiscal years subsequent to the 1989–90 fiscal year shall be accounted for on a quarterly basis.

(C) For the 1989–90 fiscal year, noncounty hospitals shall provide the demographic data specified in paragraph (2) of subdivision (b) of Section 16918 on a minimum of 5 percent of patients for whom services are paid for in whole or in part by funds allocated pursuant to this paragraph, in addition to any other requirements specified in Section 16918.

(D) For the 1990–91 fiscal year and fiscal years thereafter, noncounty hospitals shall provide data pursuant to the reporting requirements specified in Section 16918 and shall provide posted and individual notices pursuant to Section 16818 for the duration of any quarter during which funds allocated pursuant to this paragraph are used.

(E) Amounts calculated pursuant to this paragraph shall not be reduced or utilized to offset the costs of administering the Hospital Services Account.

(2) (A) (i) The remaining 50 percent of the funds from the Hospital Services Account shall be distributed by the county to hospitals, including those under contract with the county, to

maintain access to emergency care and to purchase other necessary hospital services provided during the fiscal year of the allocation.

(ii) In contracting for emergency care with hospitals in neighboring counties, the county shall not impose conditions to accept transfers that it does not impose on hospitals within its own boundaries.

(B) (i) Prior to distributing funds to hospitals, each county shall consult with the hospitals and consider the historic and projected patterns of care provided by hospitals, by geographic catchment areas within both urban and nonurban areas, unique costs associated with treating disproportionate numbers of severely ill indigent patients, and disproportionate losses sustained by hospitals in the provision of care.

(ii) The county shall also consider the patterns of care of its residents provided by Level I trauma care hospitals in contiguous counties and may make proportionate allocations to those trauma centers.

(c) (1) The amount of each county's Hospital Services Account funding portion calculated in paragraph (2) of subdivision (a) may be used for the payment or support of services provided in county hospitals or noncounty hospitals as determined by each county during the fiscal year of the allocation.

(2) Beginning in the 1991–92 fiscal year and annually thereafter, the amount of each county's funding portion calculated pursuant to paragraph (2) of subdivision (a) shall be reduced by an amount that shall be calculated as follows:

(A) Divide each county's amount of funding under paragraph (2) of subdivision (a) by the total amount of funding under that paragraph for all counties.

(B) Multiply the quotient calculated pursuant to subparagraph (A) by the sum of six million dollars ($6,000,000).

(d) As a condition of receiving funds under this section and Section 16932, each county shall require each county and noncounty hospital to do all of the following:

(1) (A) Maintain the same number and classification of emergency room permits and trauma facility designations as existed on January 1, 1990.

(B) (i) Any hospital that maintained two special permits for basic emergency service on the effective date of this part shall be deemed to have met the requirements of paragraph (1) of subdivision (d), if each of the emergency rooms was located on separate campuses of the hospital and was located not more than two miles from the other emergency room.

(ii) Clause (i) shall apply even if one of the emergency room permits is surrendered after the effective date of this part.

(2) Provide data and reports on the use and expenditure of all funds received. This information shall be in a form and according to procedures specified by the county and the department.

(3) Assure that funds received pursuant to this section are used only for services for persons who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government.

(e) (1) If a county or noncounty hospital does not comply with this section, the county shall recover funds received by the hospital as follows:

(A) For any violation of paragraph (1) of subdivision (d), the county shall recover that portion of the funds received which equal the ratio of the number of months not in compliance to 12 months.

(B) For any violation of paragraph (2) of subdivision (d), the county shall recover all funds received.

(C) For any violation of paragraph (3) of subdivision (d), the county shall recover the difference between the amount received and the amount for which the hospital can document that the funds were used only for services for persons who cannot afford to pay for those services and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government.

(2) The county may deny further payments required by this section until the hospital demonstrates compliance.

(f) Funds withheld or recovered pursuant to this section may be reallocated and distributed by the county pursuant to paragraph (2) of subdivision (b).

(g) (1) Except as provided in paragraph (2), funds allocated pursuant to paragraph (1) or (2) of subdivision (b) which are not expended because a hospital does not participate shall be redistributed pursuant to paragraph (2) of subdivision (b).

(2) If no noncounty hospitals remain to participate, the county may distribute those unexpended funds pursuant to subdivision (c).

(h) (1) In any county that comprises not more than one-half percent of the total state population and in which there are a county hospital and a noncounty hospital with emergency room permits located within two miles of each other, the county hospital may surrender its emergency room permit without any penalty for violation of paragraph (1) of subdivision (d) if, in the alternative, all of the following occur:

(A) The county shall enter into a contractual arrangement with the noncounty hospital.

(B) The county and noncounty hospital shall provide for the availability of at least the same level of emergency services and specialty backup which the county hospital and noncounty hospital provided prior to the surrendering of the emergency room permit.

(C) The county shall establish sufficient capacity, including evening and weekend coverage, in its urgent care clinic and other outpatient clinics to provide for the same or greater level of urgent care and nonemergency visits that were provided in the county

hospital emergency department in the calendar year prior to the surrendering of the emergency room permit.

(D) The county shall provide for adequate initial public hearings and ongoing public notification and information, in Spanish and English, on the availability of emergency, urgent care, and nonurgent clinic services and how to obtain those services. The county shall provide for, as part of the ongoing public notification, an outreach program to ensure that the medically indigent community, particularly migrant and seasonal farmworkers, and cultural and linguistic minority patients, are effectively made aware of the alternative system of care and the ways to access it.

(E) The county ensures that there are adequate Spanish translation services and referral services on a 24-hour basis at the noncounty hospital emergency department, and at the county hospital clinics, during their hours of operation.

(F) The county shall ensure, in planning for an alternative delivery system as provided for in paragraph (C), participation of those existing agencies providing health care services to the uninsured and working poor medically indigent, including federally qualified health centers and nonprofit community-based rural health clinics.

(G) The county shall ensure that its alternative delivery system includes medical providers who are culturally and linguistically competent to service the diverse medically indigent populations and have been serving uninsured persons seeking care at the county hospital prior to closing. These providers shall include, among others, nonprofit community-based safety net and traditional providers currently serving both the uninsured and medically indigent populations.

(H) The county shall ensure that its alternative delivery system does not provide less health care services and resources than that being made available to the medically indigent and uninsured prior to the closing of the county hospital.

(2) The department shall annually review the county's compliance with this subdivision. If the department determines that the county is not in compliance with this subdivision, it shall require the county to recover funds and deny further payments pursuant to subdivision (e) until compliance is resumed.

(3) Any county that is permitted under paragraph (1) to surrender its emergency room permit shall continue to fulfill its duties and obligations to provide indigent care according to Section 17000.

(i) Any county of the 20th class or the 24th class that discontinues the provision of acute inpatient care services may surrender its emergency room permit without any penalty for violation of paragraph (1) of subdivision (d), provided that the county shall enter into a contractual arrangement with at least one noncounty hospital meeting the requirements of subdivision (d) and all of the

requirements of subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (h) are met by the county and the contracting noncounty hospital, in which case paragraphs (2) and (3) of subdivision (h) shall apply to that county.

CHAPTER 731

An act to amend Sections 129805 and 129825 of the Health and Safety Code, relating to hospitals.

[Approved by Governor October 6, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 129805 of the Health and Safety Code is amended to read:

129805. (a) All plans and specifications shall be prepared under the responsible charge of an architect or a structural engineer, or both. A structural engineer shall prepare the structural design and shall sign plans and specifications related thereto. Administration of the work of construction shall be under the responsible charge of the architect and structural engineer, except that where plans and specifications for alterations or repairs do not affect architectural or structural conditions, the plans and specifications may be prepared and work of construction may be administered by a professional engineer duly qualified to perform the services and holding a valid certificate under Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code for performance of services in that branch of engineering in which the plans, specifications, and estimates and work of construction are applicable.

(b) The office may exempt projects from the requirements of subdivision (a) where the plans and specifications are not ordinarily, in the standard practice of architecture and engineering, prepared by licensed architects or registered engineers, or both, and are not a component of a project prepared under the responsible charge of a licensed architect or registered engineer, or both. To implement this authority, the office shall adopt regulations, consistent with this section, that specify which projects may be exempted from the requirements of subdivision (a).

SEC. 2. Section 129825 of the Health and Safety Code is amended to read:

129825. (a) The hospital governing board or authority shall provide for and require competent and adequate inspection during construction or alteration by an inspector satisfactory to the architect or structural engineer, or both, and the office. Except as otherwise provided in subdivision (b), the inspector shall act under the

direction of the architect or structural engineer, or both, and be responsible to the board or authority. Nothing in this section shall be construed to prohibit any licensed architect, structural engineer, mechanical engineer, electrical engineer, or any facility maintenance personnel, if approved by the office, from performing the duties of an inspector.

(b) If alterations or repairs are to be conducted under the supervision of a professional engineer pursuant to Section 129805, the inspector need only be satisfactory to the office and to the professional engineer, and the inspector shall act under the direction of the professional engineer.

(c) The office shall make an inspection of the hospital buildings and of the work of construction or alteration as in its judgment is necessary or proper for the enforcement of this chapter and the protection of the safety of the public.

Whenever the office finds a violation of this chapter that requires correction, the citation of the violation shall be issued to the hospital governing board or authority in writing and shall include a proper reference to the regulation or statute being violated.

(d) The office shall approve inspectors that shall be limited to the following:

(1) "A" inspectors, who may inspect all areas of construction specialty, including, but not limited to, structural.

(2) "B" inspectors, who may inspect all areas of construction specialty, except structural.

(3) "C" inspectors, who may inspect one or more areas of construction specialty, including structural, but may not inspect the scope of construction specialties authorized for "A" or "B" inspectors.

(e) (1) As part of its approval process, the office shall initially and periodically examine inspectors by giving either a written examination or a written and oral examination. The office may charge a fee for the examination process calculated to cover its costs. Inspectors who have not passed a written examination shall not be approved by the office until they have successfully passed the written examination. No employee of the office performing field inspections or supervising the field inspections shall be approved as an inspector on any construction project pursuant to this chapter for a period of one year after leaving employment of the office.

(2) The office shall develop regulations for the testing and approval of inspectors.

CHAPTER 732

An act to amend Sections 1226, 117670, 117680, 117690, 117705, 117755, 117760, and 129885 of, to add Sections 117672, 117776, 117777,

117778, and 118005 to, and to add Chapter 9.5 (commencing with Section 118321) to Part 14 of Division 104 of, the Health and Safety Code, relating to health services.

[Approved by Governor October 6, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 1226 of the Health and Safety Code is amended to read:

1226. (a) The regulations shall prescribe the kinds of services which may be provided by clinics in each category of licensure and shall prescribe minimum standards of adequacy, safety, and sanitation of the physical plant and equipment, minimum standards for staffing with duly qualified personnel, and minimum standards for providing the services offered. These minimum standards shall be based on the type of facility, the needs of the patients served, and the types and levels of services provided.

(b) The Office of Statewide Health Planning and Development, in consultation with the Community Clinics Advisory Committee, shall prescribe minimum construction standards of adequacy and safety for the physical plant of clinics as found in the California Building Standards Code.

(c) A city or county, as applicable, shall have plan review and building inspection responsibilities for the construction or alteration of buildings described in paragraph (1) and paragraph (2) of subdivision (b) of Section 1204 and shall apply the provisions of the latest edition of the California Building Standards Code in conducting these plan review responsibilities. For these buildings, construction and alteration shall include conversion of a building to a purpose specified in paragraphs (1) and (2) of subdivision (b) of Section 1204.

Upon the initial submittal to a city or county by the governing authority or owner of these clinics for plan review and building inspection services, the city or county shall reply in writing to the clinic whether or not the plan review by the city or county will include a certification as to whether or not the clinic project submitted for plan review meets the standards as propounded by the office in the California Building Standards Code.

If the city or county indicates that its review will include this certification it shall do all of the following:

(1) Apply the applicable clinic provisions of the latest edition of the California Building Standards Code.

(2) Certify in writing, to the applicant within 30 days of completion of construction whether or not these standards have been met.

(d) If upon initial submittal, the city or county indicates that its plan review will not include this certification, the governing authority or owner of the clinic shall submit the plans to the Office of Statewide Health Planning and Development who shall review the plans for certification whether or not the clinic project meets the standards, as propounded by the office in California Building Standards Code.

(e) When the office performs review for certification, the office shall charge a fee in an amount that does not exceed its actual costs.

(f) The office of the State Fire Marshal shall prescribe minimum safety standards for fire and life safety in surgical clinics.

(g) Notwithstanding subdivision (c), the governing authority or owner of a clinic may request the office to perform plan review services for buildings described in subdivision (c). If the office agrees to perform these services, after consultation with the local building official, the office shall charge an amount not to exceed its actual costs. The construction or alteration of these buildings shall conform to the applicable provisions of the latest edition of the California Building Standards Code for purposes of the plan review by the office pursuant to this subdivision.

(h) Regulations adopted pursuant to this chapter establishing standards for laboratory services shall not be applicable to any clinic that operates a clinical laboratory licensed pursuant to Section 1265 of the Business and Professions Code.

SEC. 1.5. Section 117670 of the Health and Safety Code is amended to read:

117670. "Household waste" means any material, including garbage, trash, and sanitary wastes in septic tanks and medical waste, that is derived from households, farms, or ranches. Household waste does not include trauma scene waste.

SEC. 2. Section 117672 is added to the Health and Safety Code, to read:

117672. "Industrial hygienist" means a person who has met the educational requirements of an industrial hygiene certification organization, as defined in subdivision (c) of Section 20700 of the Business and Professions Code, and who has had at least one year in the comprehensive practice of industrial hygiene, as defined in subdivision (a) of Section 20700 of the Business and Professions Code.

SEC. 3. Section 117680 of the Health and Safety Code is amended to read:

117680. "Large quantity generator" means a medical waste generator, other than a trauma scene waste management practitioner, that generates 200 or more pounds of medical waste in any month of a 12-month period.

SEC. 4. Section 117690 of the Health and Safety Code is amended to read:

117690. (a) "Medical waste" means waste that meets both of the following requirements:

(1) The waste is composed of waste that is generated or produced as a result of any of the following actions:

(A) Diagnosis, treatment, or immunization of human beings or animals.

(B) Research pertaining to the activities specified in subparagraph (A).

(C) The production or testing of biologicals.

(D) The accumulation of properly contained home-generated sharps waste that is brought by a patient, a member of the patient's family, or by a person authorized by the enforcement agency, to a point of consolidation approved by the enforcement agency pursuant to Section 117904 or authorized pursuant to Section 118147.

(E) Removal of a regulated waste, as defined in Section 5193 of Title 8 of the California Code of Regulations, from a trauma scene by a trauma scene waste management practitioner.

(2) The waste is either of the following:

(A) Biohazardous waste.

(B) Sharps waste.

(b) For purposes of this section, "biologicals" means medicinal preparations made from living organisms and their products, including, but not limited to, serums, vaccines, antigens, and antitoxins.

(c) Medical waste includes trauma scene waste.

SEC. 5. Section 117705 of the Health and Safety Code is amended to read:

117705. "Medical waste generator" means any person whose act or process produces medical waste and includes, but is not limited to, a provider of health care, as defined in subdivision (d) of Section 56.05 of the Civil Code. All of the following are examples of businesses that generate medical waste:

(a) Medical and dental offices, clinics, hospitals, surgery centers, laboratories, research laboratories, unlicensed health facilities, those facilities required to be licensed pursuant to Division 2 (commencing with Section 1200), chronic dialysis clinics, as regulated pursuant to Division 2 (commencing with Section 1200), and education and research facilities.

(b) Veterinary offices, veterinary clinics, and veterinary hospitals.

(c) Pet shops.

(d) Trauma scene waste management practitioners.

SEC. 6. Section 117755 of the Health and Safety Code is amended to read:

117755. "Sharps waste" means any device having acute rigid corners, edges, or protuberances capable of cutting or piercing, including, but not limited to, all of the following:

(a) Hypodermic needles, hypodermic needles with syringes, blades, needles with attached tubing, syringes contaminated with biohazardous waste, acupuncture needles, and root canal files.

(b) Broken glass items, such as Pasteur pipettes and blood vials contaminated with biohazardous waste.

(c) Any item capable of cutting or piercing that is contaminated with trauma scene waste.

SEC. 7. Section 117760 of the Health and Safety Code is amended to read:

117760. "Small quantity generator" means a medical waste generator, other than a trauma scene waste management practitioner, that generates less than 200 pounds per month of medical waste.

SEC. 8. Section 117776 is added to the Health and Safety Code, to read:

117776. (a) "Trauma scene" means a location soiled by, or contaminated with, human blood, human body fluids, or other residues from the scene of a serious human injury, illness, or death.

(b) For purposes of this section, a location may include, but is not limited to, a physical structure that is not fixed geographically, such as mobile homes, trailers, or vehicles.

SEC. 9. Section 117777 is added to the Health and Safety Code, to read:

117777. "Trauma scene waste" means waste that is a regulated waste, as defined in Section 5193 of Title 8 of the California Code of Regulations, and that has been removed, is to be removed, or is in the process of being removed, from a trauma scene by a trauma scene waste management practitioner.

SEC. 10. Section 117778 is added to the Health and Safety Code, to read:

117778. "Trauma scene waste management practitioner" means a person who undertakes as a commercial activity the removal of human blood, human body fluids, and other associated residues from the scene of a serious human injury, illness, or death, and who is registered with the department pursuant to Chapter 9.5 (commencing with Section 118321).

SEC. 11. Section 118005 is added to the Health and Safety Code, to read:

118005. (a) Notwithstanding any other provision of this chapter, trauma scene waste may be transported by a trauma scene management practitioner registered pursuant to Section 118321.1.

(b) The exemption specified in Section 118030 for limited quantity hauling shall not apply to the transportation of trauma scene waste.

(c) (1) A business that has contracted with, or that currently employs, a person whose services may include the cleanup of trauma scene waste in the manner specified in Section 118321.6 may apply, on forms provided by the department, to the department for an exemption from the requirements of Section 118321.1. This exemption shall be known as an incidental trauma scene waste hauling permit, and shall authorize the person to transport, by herself or himself, trauma scene waste that is collected in the manner

specified in Section 118321.6 to a permitted medical waste transfer station or a permitted medical waste offsite treatment facility, or to a health care facility, previously designated by mutual agreement, for consolidation with the facility's existing medical waste stream.

(2) An application for an incidental trauma scene waste hauling permit shall be accompanied by a fee of twenty-five dollars ($25) and the incidental trauma scene waste hauling permit shall be valid for one cleanup event. The application shall identify any person who will transport trauma scene waste for the business pursuant to paragraph (1).

SEC. 12. Chapter 9.5 (commencing with Section 118321) is added to Part 14 of Division 104 of the Health and Safety Code, to read:

Chapter 9.5. Trauma Scene Waste Management

118321. (a) This chapter shall be known, and may be cited, as the Trauma Scene Waste Management Act.

(b) The Legislature hereby finds and declares that it is in the interests of the health and safety of the public and the solid waste industry to regulate the handling and treatment of waste that, but for contamination with large quantities of human blood or body fluids as a result of death, serious injury, or illness, would be solid waste.

(c) The Legislature further finds and declares that, in the interest of safe and uniform management of trauma scene waste, practitioners of trauma scene management should be subject to regulation by the department.

118321.1. (a) A trauma scene waste management practitioner shall register with the department on forms provided by the department.

(b) Notwithstanding subdivision (a), a person who possessed a local business license as of January 1, 1997, and performs trauma scene waste management activities may continue to do so until April 1, 1998, subject to both of the following conditions:

(1) The department has been notified of the trauma scene waste management activities.

(2) Registration as a trauma scene waste management practitioner is completed on or before April 1, 1998.

(c) The department shall register a trauma scene waste management practitioner and issue a trauma scene waste hauling permit to a trauma scene waste management practitioner who submits a completed application form and the registration fee, upon approval of the application by the department.

(d) A registered trauma scene waste management practitioner is exempt from the registration requirements imposed pursuant to Chapter 6 (commencing with Section 118025) or Article 6.5 (commencing with Section 25167.1) of Chapter 6.5 of Division 20 upon haulers of medical waste.

(e) Registered trauma scene waste management practitioners shall pay an annual fee of two hundred dollars ($200) to the department for deposit in the fund. The fee revenues deposited in the fund pursuant to this subdivision may be expended by the department, upon appropriation by the Legislature, for the implementation of this chapter.

118321.2. (a) The department shall maintain an inventory of registered trauma scene waste management practitioners.

(b) The department shall submit a list of registered trauma scene waste management practitioners to all local agency health officers and directors of environmental health, county administrators, and county sheriffs, and shall make the list available, upon request, to other public agencies and to the public.

118321.3. (a) Notwithstanding Section 117650, the department shall be the sole enforcement agency with regard to the management of trauma scene waste.

(b) The department, working with the trauma scene waste management industry and the health care industry, shall establish the following standards:

(1) Documentation of personal protection required to be provided for, and used by, workers in accordance with the California Occupational and Safety Administration's bloodborne pathogen standards.

(2) Technologies and chemicals appropriate to the task of cleanup and disinfecting.

(c) The department may adopt regulations pursuant to which trauma scene waste management practitioners shall document both of the following:

(1) Identification of trauma scene waste within the scope of this chapter.

(2) Compliance with disposal requirements, including, but not limited to, tracking the transportation of trauma scene waste.

(d) The department shall adopt procedures to provide information to trauma scene waste management practitioners recommending procedures for removing trauma scene waste from trauma scenes.

118321.4. As specified in Section 117705, a trauma scene waste management practitioner who transports trauma scene waste shall be deemed the generator of the trauma scene waste for purposes of this part.

118321.5. (a) Trauma scene waste shall be removed from the trauma scene immediately upon completion of the removal phase of a trauma scene waste removal operation.

(b) Trauma scene waste shall be transported to a permitted medical waste transfer station or treatment facility pursuant to subdivision (d) of Section 118000, or may be stored in a dedicated freezer at the business location of the trauma scene waste

management practitioner for a period of not more than 14 days, or as otherwise approved by the department.

118321.6. (a) This chapter does not limit or abridge the jurisdiction of the Division of Occupational Safety and Health of the Department of Industrial Relations.

(b) This chapter does not prohibit a business from employing or contracting with a person to provide cleanup or consultative services, including those services provided by an industrial hygienist, with respect to trauma scene waste if those services are incidental to the principal course and scope of services provided by the person.

SEC. 13. Section 129885 of the Health and Safety Code is amended to read:

129885. (a) A city or county, as applicable, shall have plan review and building inspection responsibilities for the construction or alteration of buildings described in paragraph (1) of subdivision (b) of Section 129725. The building standards for the construction or alteration of buildings specified in paragraph (1) of subdivision (b) of Section 129725 established or applied by a city or county, shall not be more restrictive or comprehensive than comparable building standards established, or otherwise applied, to clinics licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2. For chronic dialysis and surgical services buildings, construction or alteration shall include conversion of a building to a purpose specified in paragraph (1) of subdivision (b) of Section 129725.

(b) Upon the initial submittal to a city or county by the governing authority or owner of a hospital for plan review and building inspection services for buildings described in paragraph (1) of subdivision (b) of Section 129725 for chronic dialysis and surgical services, the city or county shall reply in writing to the hospital as to whether or not the plan review by the city or county will include a certification as to whether or not the clinic project submitted for plan review meets the clinic standards propounded by the office in the California Building Standards Code.

If the city or county indicates that its review will include this certification, it shall do all of the following:

(1) Apply the applicable clinic provisions of the latest edition of the California Building Standards Code.

(2) Certify in writing to the applicant within 30 days of completion of construction whether or not the standards have been met.

(c) If, upon initial submittal, the city or county indicates that its plan review will not include this certification, the governing authority or owner shall submit the plans to the Office of Statewide Health Planning and Development and the office shall review the plans for certification to determine whether or not the clinic project meets the standards propounded by the office in the California Building Standards Code.

(d) When the office performs the certification review, the office shall charge a fee in an amount not to exceed its actual cost.

(e) Notwithstanding subdivision (a), the governing authority of a hospital may request the Office of Statewide Health Planning and Development to perform plan review and building inspection services for buildings described in paragraph (1) of subdivision (b) of Section 129725. If the office agrees to perform these services, the office shall charge an amount equal to its standard fee for the construction and alteration of hospital buildings. The construction or alteration of these buildings shall conform to the applicable provisions of the latest edition of the California Building Standards Code for purposes of the plan review and building inspection of the office pursuant to this subdivision. The office shall issue the building permit and certificate of occupancy for these facilities.

(f) A building described in paragraph (1) of subdivision (b) of Section 129725 that is subject to the plan review and building inspection of the office pursuant to subdivision (e), may be designated by the governing authority or owner of the hospital as a "hospital building" as long as the building remains under the jurisdiction of the office. This hospital building shall be reviewed and inspected according to the standards and requirements of the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983 (Chapter 1 (commencing with Section 129675)).

(g) When a building is accepted for review by the office pursuant to subdivision (e), the governing authority of the hospital shall not request the city or county, as applicable, to conduct plan review and building inspection for any subsequent alteration of the same building, unless written notification is submitted to the office by the governing authority or owner of the hospital.

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 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 733

An act to amend Section 6366 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 6, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 6366 of the Revenue and Taxation Code is amended to read:

6366. (a) There are exempted from the taxes imposed by this part the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, the following:

(1) Aircraft sold to any person using the aircraft as a common carrier of persons or property under authority of the laws of this state, of the United States, or of any foreign government, or sold to any foreign government for use by that government outside of this state, or sold to any person who is not a resident of this state and who will not use that aircraft in this state otherwise than in the removal of the aircraft from this state.

(2) (A) A ground control station sold to any foreign government for use by that government outside of this state or sold to any person who is not a resident of this state and who will not use that ground control station in this state otherwise than in the removal of the ground control station from this state.

(B) A "ground control station" means a portable facility used to operate aircraft in the air without a pilot on board. The term includes controls, video equipment, computers, generators, and communications equipment, sold as an integral part of the station, and antennas used to control the aircraft. The term does not include trucks, tractor-trailers, or other devices solely used to transport the station.

(3) Tangible personal property that is purchased on or after October 1, 1996, and becomes a component part of any aircraft described in paragraph (1), as a result of the maintenance, repair, overhaul, or improvement of that aircraft in compliance with Federal Aviation Administration requirements, and any charges made for labor and services rendered with respect to that maintenance, repair, overhaul, or improvement.

(b) With respect to aircraft sold on or after January 1, 1997, it shall be presumed that a person is not engaged in business as a common carrier if the person's yearly gross receipts from the use of the aircraft as a common carrier do not exceed 20 percent of the purchase cost of the aircraft to him or her, or fifty thousand dollars ($50,000), whichever is less. This presumption may be rebutted by contrary evidence satisfactory to the board showing that the person is engaged in business as a common carrier.

In no event shall "gross receipts" include compensation by the person or related parties for use of the aircraft as a common carrier.

(c) With respect to aircraft leased, or sold for the purpose of leasing, on or after January 1, 1997, it shall be presumed that the aircraft is not regularly used in the business of transporting for hire property or persons if the lessor's yearly gross receipts from the lease of that aircraft to persons using the aircraft as common carriers of

property or persons do not exceed 20 percent of the cost of the aircraft to the lessor, or fifty thousand dollars ($50,000), whichever is less. This presumption may be rebutted by contrary evidence satisfactory to the board showing that the aircraft is regularly used as a common carrier of property or persons.

In no event shall "gross receipts" include compensation by the lessor or related parties for use of the aircraft as a common carrier.

SEC. 2. It is the intent of the Legislature that the State Board of Equalization administer the exemption for the sale and use of ground control stations provided by Section 1 of this act consistent with existing regulations administering the exemption for the sale and use of aircraft sold to a foreign government for use by that government outside of this state or sold to a person who is not a resident of this state and who will not use that aircraft in this state otherwise than in the removal of the aircraft from this state.

SEC. 3. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this act.

CHAPTER 734

An act to amend Sections 116275, 116285, 116290, 116325, 116390, 116425, 116540, 116565, 116580, 116585, 116650, and 116880 of, to amend and renumber Section 116300 of, to add Sections 116286 and 116287 to, to add Chapter 4.5 (commencing with Section 116760) to Part 12 of Division 104 of, and to repeal and add Section 116875 of, the Health and Safety Code, and to add Section 13169 to the Water Code, relating to drinking water, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 6, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 116275 of the Health and Safety Code is amended to read:

116275. As used in this chapter:

(a) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

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

(c) "Primary drinking water standards" means:

(1) Maximum levels of contaminants that, in the judgment of the department, may have an adverse effect on the health of persons.

(2) Specific treatment techniques adopted by the department in lieu of maximum contaminant levels pursuant to subdivision (j) of Section 116365.

(3) The monitoring and reporting requirements as specified in regulations adopted by the department that pertain to maximum contaminant levels.

(d) "Secondary drinking water standards" means standards that specify maximum contaminant levels that, in the judgment of the department, are necessary to protect the public welfare. Secondary drinking water standards may apply to any contaminant in drinking water that may adversely affect the odor or appearance of the water and may cause a substantial number of persons served by the public water system to discontinue its use, or that may otherwise adversely affect the public welfare. Regulations establishing secondary drinking water standards may vary according to geographic and other circumstances and may apply to any contaminant in drinking water that adversely affects the taste, odor, or appearance of the water when the standards are necessary to assure a supply of pure, wholesome, and potable water.

(e) "Human consumption" means the use of water for drinking, bathing or showering, hand washing, or oral hygiene.

(f) "Maximum contaminant level" means the maximum permissible level of a contaminant in water.

(g) "Person" means an individual, corporation, company, association, partnership, limited liability company, municipality, public utility, or other public body or institution.

(h) "Public water system" means a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. A public water system includes the following:

(1) Any collection, treatment, storage, and distribution facilities under control of the operator of the system which are used primarily in connection with the system.

(2) Any collection or pretreatment storage facilities not under the control of the operator that are used primarily in connection with the system.

(3) Any water system that treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption.

(i) "Community water system" means a public water system that serves at least 15 service connections used by yearlong residents or

regularly serves at least 25 yearlong residents of the area served by the system.

(j) "Noncommunity water system" means a public water system that is not a community water system.

(k) "Nontransient noncommunity water system" means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over 6 months per year.

(*l*) "Local health officer" means a local health officer appointed pursuant to Section 101000 or a local comprehensive health agency designated by the board of supervisors pursuant to Section 101275 to carry out the drinking water program.

(m) "Significant rise in the bacterial count of water" means a rise in the bacterial count of water that the department determines, by regulation, represents an immediate danger to the health of water users.

(n) "State small water system" means a system for the provision of piped water to the public for human consumption that serves at least five, but not more than 14, service connections and does not regularly serve drinking water to more than an average of 25 individuals daily for more than 60 days out of the year.

(o) "Transient noncommunity water system" means a noncommunity water system that does not regularly serve at least 25 of the same persons over six months per year.

(p) "User" means any person using water for domestic purposes. User does not include any person processing, selling, or serving water or operating a public water system.

(q) "Waterworks standards" means regulations adopted by the department that take cognizance of the latest available "Standards of Minimum Requirements for Safe Practice in the Production and Delivery of Water for Domestic Use" adopted by the California section of the American Water Works Association.

(r) "Local primacy agency" means any local health officer that has applied for and received primacy delegation from the department pursuant to Section 116330.

(s) "Service connection" means the point of connection between the customer's piping or constructed conveyance, and the water system's meter, service pipe, or constructed conveyance. A connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection in determining if the system is a public water system if any of the following apply:

(1) The water is used exclusively for purposes other than residential uses, consisting of drinking, bathing, and cooking or other similar uses.

(2) The department determines that alternative water to achieve the equivalent level of public health protection provided by the applicable primary drinking water regulation is provided for residential or similar uses for drinking and cooking.

(3) The department determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a passthrough entity, or the user to achieve the equivalent level of protection provided by the applicable primary drinking water regulations.

(t) "Resident" means a person who physically occupies, whether by ownership, rental, lease or other means, the same dwelling for at least 60 days of the year.

SEC. 2. Section 116285 of the Health and Safety Code is amended to read:

116285. Before August 6, 1998, this chapter shall not apply to an irrigation canal system if the owner or operator of the system certifies to the department, and notifies each user, in writing, that the water is untreated and is being furnished or supplied solely for agricultural purposes to either of the following:

(a) A user where the user receives the water, by pipe or otherwise, directly from the irrigation canal system.

(b) A person who owns or operates an integrated pipe system where the person receives the water, by pipe or otherwise, directly from the irrigation canal system.

"Irrigation canal system," as used in this section, means a system of water conveyance facilities, including pipes, tunnels, canals, conduits, pumping plants and related facilities operated to furnish or supply water for agricultural purposes where a substantial portion of the facilities is open to the atmosphere.

SEC. 3. Section 116286 is added to the Health and Safety Code, to read:

116286. (a) A water district, as defined in subdivision (b), in existence prior to May 18, 1994, that provides primarily agricultural services through a piped water system with only incidental residential or similar uses shall not be considered to be a public water system if the department determines that either of the following applies:

(1) The system or the residential or similar users of the system certify to the system that they are providing alternative water for residential or similar uses for drinking water and cooking to achieve the equivalent level of public health protection provided by the applicable primary drinking water regulations.

(2) The water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a passthrough entity, or the user to achieve the equivalent level of protection provided by the applicable primary drinking water regulations.

(b) For purposes of this section, "water district" means any district or other political subdivision, other than a city or county, a primary function of which is irrigation, reclamation, or drainage of land.

SEC. 4. Section 116287 is added to the Health and Safety Code, to read:

116287. (a) The department, in implementing subdivision (s) of Section 116275 and Section 116286, shall place requirements on affected public water systems and water districts that are consistent with this chapter and the guidelines established by the United States Environmental Protection Agency for implementing comparable provisions of the federal Safe Drinking Water Act of 1996.

(b) The department, in making the determinations specified in paragraphs (2) and (3) of subdivision (s) of Section 116275 and subdivisions (a) and (b) of Section 116286, shall utilize criteria that are consistent with this chapter and those used by the United States Environmental Protection Agency in administering the comparable provisions of the federal Safe Drinking Water Act.

(c) The department shall periodically monitor and review the conditions under which a public water system, or a water district as defined in subdivision (b) of Section 116286, has met the requirements of this chapter pursuant to subdivision (s) of Section 116275 or Section 116286, or pursuant to the federal act, to ensure that the conditions continue to be met.

(d) The department may prescribe reasonable, feasible, and cost-effective actions to be taken by a public water system, water district, as defined in subdivision (b) of Section 116286, or users subject to subdivision (s) of Section 126275 or Section 116286 to ensure that alternative water or treated water provided by the water systems, water districts, or users pursuant to Section 116275 or 116286 will not be injurious to health.

SEC. 5. Section 116290 of the Health and Safety Code is amended to read:

116290. Before August 6, 1998, in areas where the water service rendered by a person is primarily agricultural, and domestic service is only incidental thereto, this chapter shall not apply except in specific areas in which the department has found its application to be necessary for the protection of the public health and has given written notice thereof to the person furnishing or supplying water in the area.

The department may prescribe reasonable and feasible action to be taken by those persons or the users to insure that their domestic water will not be injurious to health.

SEC. 6. Section 116300 of the Health and Safety Code is amended and renumbered to read:

116270. The Legislature finds and declares all of the following:

(a) Every citizen of California has the right to pure and safe drinking water.

(b) Feasible and affordable technologies are available and shall be used to remove toxic contaminants from public water supplies.

(c) According to the State Department of Health Services, over 95 percent of all large public water systems in California are in

compliance with health-based action levels established by the department for various contaminants.

(d) It is the policy of the state to reduce to the lowest level feasible all concentrations of toxic chemicals that when present in drinking water may cause cancer, birth defects, and other chronic diseases.

(e) This chapter is intended to ensure that the water delivered by public water systems of this state shall at all times be pure, wholesome, and potable. This chapter provides the means to accomplish this objective.

(f) It is the intent of the Legislature to improve laws governing drinking water quality, to improve upon the minimum requirements of the federal Safe Drinking Water Act Amendments of 1996, to establish primary drinking water standards that are at least as stringent as those established under the federal Safe Drinking Water Act, and to establish a program under this chapter that is more protective of public health than the minimum federal requirements.

(g) It is the further intent of the Legislature to establish a drinking water regulatory program within the State Department of Health Services in order to provide for the orderly and efficient delivery of safe drinking water within the state and to give the establishment of drinking water standards and public health goals greater emphasis and visibility within the state department.

SEC. 7. Section 116325 of the Health and Safety Code is amended to read:

116325. The department shall be responsible for ensuring that all public water systems are operated in compliance with this chapter and any regulations adopted hereunder. The department shall directly enforce this chapter for all public water systems except as set forth in Section 116500.

SEC. 8. Section 116390 of the Health and Safety Code is amended to read:

116390. (a) No laboratory, other than a laboratory operated by the department, shall perform tests required pursuant to this chapter for any public water system without first obtaining a certificate issued by the department pursuant to Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101.

(b) No person or public entity of the state shall contract with a laboratory for environmental analyses for which the state department requires certification pursuant to this section, unless the laboratory holds a valid certificate.

SEC. 9. Section 116425 of the Health and Safety Code is amended to read:

116425. (a) The department may exempt any public water system from any maximum contaminant level or treatment technique requirement if it finds all the following:

(1) The public water system was in operation, or had applied for a permit to operate, on the effective date of the maximum contaminant level or treatment technique requirement.

(2) Due to compelling factors, which may include either of the following factors, the public water system is unable to comply with the maximum contaminant level or treatment technique requirement or to implement measures to develop an alternative water supply:

(A) Economic factors.

(B) The entire service area of the public water system consists of a disadvantaged community, as defined under Section 1452(d) of the federal Safe Drinking Water Act (42 U.S.C. Sec. 300g-5), and meets the affordability criteria established by the department, after review and public hearing.

(3) The granting of the exemption will not result in an unreasonable risk to health.

(4) Management or restructuring changes, or both, cannot reasonably be made that will result in compliance with this chapter or, if compliance cannot be achieved, improve the quality of the drinking water.

(b) If the department grants a public water system an exemption for a primary drinking water standard under subdivision (a), the department shall prescribe, at the time an exemption is granted, a schedule for both of the following:

(1) Compliance by the public water system with each contaminant level or treatment technique requirement for which the exemption was granted.

(2) Implementation by the public water system of interim control measures the department may require for each contaminant or treatment technique requirement for which the exemption was granted.

(c) Any schedule prescribed by the department pursuant to this section shall require compliance by the public water system with each contaminant level or treatment technique requirement for which the exemption was granted within 12 months from the granting of the exemption.

(d) The final date for compliance with any schedule issued pursuant to this section may be extended by the department for a period not to exceed three years from the date of the granting of the exemption if the department finds all of the following:

(1) The system cannot meet the standard without capital improvements that cannot be completed prior to the date established pursuant to Section 1412(b)(1) of the federal Safe Drinking Water Act (42 U.S.C. 300g-(b)(1)).

(2) In the case of a system that needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain the financial assistance or the system has entered into an enforceable agreement to become part of a regional public water system.

(3) The system is taking all practicable steps to meet the standard.

(e) In the case of a system that does not serve more than a population of 3,300 and that needs financial assistance for the necessary improvements, an exemption granted pursuant to paragraph (2) of subdivision (d) shall not exceed a total of six years.

(f) Prior to the granting of an exemption pursuant to this section, the department shall provide notice and an opportunity for a public hearing. Notice of any public hearing held pursuant to this section shall be given by the department in writing to the public water system seeking the exemption and to the public as provided in Section 6061 of the Government Code. A public hearing provided pursuant to this subdivision is not an adjudicative hearing and is not required to comply with Section 100171.

(g) A public water system may not receive an exemption under this section if the system is granted a variance pursuant to Section 116430.

(h) Unless the department has already granted an exemption pursuant to subdivision (a), the department may exempt a public water system from compliance with a maximum containment level or treatment technique requirement for up to two years if the department finds, and continues to find, that a plan submitted by the water system may reasonably be expected to bring the water system into compliance by any of the following means:

(1) The physical consolidation of the system with one or more other systems.

(2) The consolidation of significant management and administrative functions of the system with one or more other systems.

(3) The transfer of ownership of the system.

SEC. 10. Section 116540 of the Health and Safety Code is amended to read:

116540. Following completion of the investigation and satisfaction of the requirements of subdivisions (a) and (b), the department shall issue or deny the permit. The department may impose permit conditions, requirements for system improvements, and time schedules as it deems necessary to assure a reliable and adequate supply of water at all times that is pure, wholesome, potable, and does not endanger the health of consumers.

(a) No public water system that was not in existence on January 1, 1998, shall be granted a permit unless the system demonstrates to the department that the water supplier possesses adequate financial, managerial, and technical capability to assure the delivery of pure, wholesome, and potable drinking water. This section shall also apply to any change of ownership of a public water system that occurs after January 1, 1998.

(b) No permit under this chapter shall be issued to an association organized under Title 3 (commencing with Section 20000) of Division 3 of the Corporations Code. This section shall not apply to

unincorporated associations that as of December 31, 1990, are holders of a permit issued under this chapter.

SEC. 11. Section 116565 of the Health and Safety Code is amended to read:

116565. (a) Each public water system serving 1,000 or more service connections and any public water system that treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption, shall reimburse the department for actual cost incurred by the department for conducting those activities mandated by this chapter relating to the issuance of domestic water supply permits, inspections, monitoring, surveillance, and water quality evaluation that relate to that specific public water system. The amount of reimbursement shall be sufficient to pay, but in no event shall exceed, the department's actual cost in conducting these activities.

(b) Each public water system serving less than 1,000 service connections shall pay an annual drinking water operating fee to the department as set forth in this subdivision for costs incurred by the department for conducting those activities mandated by this chapter relating to inspections, monitoring, surveillance, and water quality evaluation relating to public water systems. The total amount of fees shall be sufficient to pay, but in no event shall exceed, the department's actual cost in conducting these activities. Notwithstanding adjustment of actual fees collected pursuant to Section 100425 as authorized pursuant to subdivision (d) of Section 106590, the maximum amount that shall be paid annually by a public water system pursuant to this section shall not exceed the following:

Type of public water system	Fee
15– 24 service connections	$250
25– 99 service connections	$400
100–499 service connections	$500
500–999 service connections	$700
Noncommunity water systems pursuant to paragraph (1) of subdivision (j) of Section 116275	$350
Noncommunity water systems exempted pursuant to Section 116282	$100

(c) For purposes of determining the fees provided for in subdivision (a), the department shall maintain a record of its actual costs for pursuing the activities specified in subdivision (a) relative to each system required to pay the fees. The fee charged each system shall reflect the department's actual cost, or in the case of a local

primacy agency the local primacy agency's actual cost, of conducting the specified activities.

(d) The department shall submit an invoice for cost reimbursement for the activities specified in subdivision (a) to the public water systems no more than twice a year.

(1) The department shall submit one estimated cost invoice to public water systems serving 1,000 or more service connections and any public water system that treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption. This invoice shall include the actual hours expended during the first six months of the fiscal year. The hourly cost rate used to determine the amount of the estimated cost invoice shall be the rate for the previous fiscal year.

(2) The department shall submit a final invoice to the public water system prior to October 1 following the fiscal year that the costs were incurred. The invoice shall indicate the total hours expended during the fiscal year, the reasons for the expenditure, the hourly cost rate of the department for the fiscal year, the estimated cost invoice, and payments received. The amount of the final invoice shall be determined using the total hours expended during the fiscal year and the actual hourly cost rate of the department for the fiscal year. The payment of the estimated invoice, exclusive of late penalty, if any, shall be credited toward the final invoice amount.

(3) Payment of the invoice issued pursuant to paragraphs (1) and (2) shall be made within 90 days of the date of the invoice. Failure to pay the amount of the invoice within 90 days shall result in a 10-percent late penalty that shall be paid in addition to the invoiced amount.

(e) Any public water system under the jurisdiction of a local primacy agency shall pay the fees specified in this section to the local primacy agency in lieu of the department. This section shall not preclude a local health officer from imposing additional fees pursuant to Section 101325.

SEC. 12. Section 116580 of the Health and Safety Code is amended to read:

116580. (a) Each public water system that requests an exemption, plan review, variance, or waiver of any applicable requirement of this chapter or any regulation adopted pursuant to this chapter, shall reimburse the department for actual costs incurred by the department in processing the request.

(b) The department shall submit an invoice to the water system prior to October 1 of the fiscal year following the fiscal year in which the department's decision was rendered with respect to the request for a plan review, exemption, variance, or waiver. The invoice shall indicate the number of hours expended by the department and the department's hourly cost rate. Payment of the fee shall be made within 120 days of the date of the invoice. The department may

revoke any approval of a request for an exemption, variance, or waiver for failure to pay the required fees.

(c) Notwithstanding subdivisions (a) and (b), requests for, and reimbursement of actual costs for, an exemption, variance, or waiver for public water systems under the jurisdiction of the local primacy agency shall, instead, be submitted to the local primacy agency pursuant to subdivision (c) of Section 116595.

SEC. 13. Section 116585 of the Health and Safety Code is amended to read:

116585. In any civil court action brought to enforce this chapter, the prevailing party or parties shall be awarded litigation costs, including, but not limited to, salaries, benefits, travel expenses, operating equipment, administrative, overhead, other litigation costs, and attorney's fees, as determined by the court. Litigation costs awarded to the department by the court shall be deposited into the Safe Drinking Water Account. Litigation costs awarded to a local primacy agency by the court shall be used by that local primacy agency to offset the local primacy agency's litigation costs.

SEC. 14. Section 116650 of the Health and Safety Code is amended to read:

116650. (a) If the department determines that a public water system is in violation of this chapter or any regulation, permit, standard, or order issued or adopted thereunder, the department may issue a citation to the public water system. The citation shall be served upon the public water system personally or by registered mail.

(b) Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the statutory provision, standard, order, or regulation alleged to have been violated.

(c) For continuing violations, the citation shall fix the earliest feasible time for elimination or correction of the condition constituting the violation where appropriate. If the public water system fails to correct a violation within the time specified in the citation, the department may assess a civil penalty as specified in subdivision (e).

(d) For a noncontinuing violation of primary drinking standards, other than turbidity, the department may assess in the citation a civil penalty as specified in subdivision (e).

(e) Citations issued pursuant to this section shall be classified according to the nature of the violation or the failure to comply. The department shall specify the classification in the citation and may assess civil penalties for each classification as follows:

(1) For violation of a primary drinking standard, other than turbidity, an amount not to exceed one thousand dollars ($1,000) for each day that the violation occurred for noncontinuing violations or for each day that the violation continues beyond the date specified for correction in the citation.

(2) For failure to comply with any citation or order issued for failure of the primary drinking water standard for turbidity or for violation of a secondary drinking water standard that the director determines may have a direct or immediate relationship to the welfare of the users, an amount not to exceed one thousand dollars ($1,000) for each day that the violation continues beyond the date specified for correction in the citation.

(3) For failure to comply with any citation or order issued for noncompliance with any department regulation or order, other than a primary or secondary drinking water standard, an amount not to exceed two hundred dollars ($200) per day for each day the violation continues beyond the date specified for correction in the citation.

SEC. 15. Chapter 4.5 (commencing with Section 116760) is added to Part 12 of Division 104 of the Health and Safety Code, to read:

CHAPTER 4.5. SAFE DRINKING WATER STATE REVOLVING FUND LAW OF 1997

Article 1. Short Title

116760. This chapter shall be known and may be cited as the Safe Drinking Water State Revolving Fund Law of 1997.

Article 2. Legislative Findings of Necessity and Cause for Action

116760.10. The Legislature hereby finds and declares all of the following:

(a) The department has discovered toxic contaminants and new pathogenic organisms, including cryptosporidium, in many of California's public drinking water systems.

(b) Many of the contaminants in California's drinking water supplies are known to cause, or are suspected of causing, cancer, birth defects, and other serious illnesses.

(c) It is unlikely that the contamination problems of small public water systems can be solved without financial assistance from the state.

(d) The protection of the health, safety, and welfare of the people of California requires that the water supplied for domestic purposes be at all times pure, wholesome, and potable. It is in the interest of the people that the state of California provide technical and financial assistance to ensure a safe, dependable, and potable supply of water for domestic purposes and that water is available in adequate quantity at sufficient pressure for health, cleanliness, and other domestic purposes.

(e) It is the intent of the Legislature to provide for the upgrading of existing public water supply systems to ensure that all domestic water supplies meet safe drinking water standards and other

requirements established under Chapter 4 (commencing with Section 116270).

(f) (1) The extent of the current risk to public health from contamination in drinking water creates a compelling need to upgrade existing public water systems. The demand for financial assistance to enable public water systems to meet drinking water standards and regulations exceeds funds available from the Safe Drinking Water State Revolving Fund.

(2) A project whose primary purpose is to supply or attract growth shall not be eligible to receive assistance from the Safe Drinking Water State Revolving Fund.

(3) A project whose primary purpose is to enable a public water system to improve public health protection by complying with drinking water standards and regulations and that also includes components to accommodate a reasonable amount of growth over its useful life shall be eligible for assistance from the Safe Drinking Water State Revolving Fund, but the project shall receive priority based on the component to meet drinking water standards pursuant to Section 116760.70. The department shall expressly consider the effort of the applicant to secure funds other than those available from the Safe Drinking Water State Revolving Fund in establishing the priority listing for funding pursuant to Article 4 (commencing with Section 116760.50).

(4) After projects have been prioritized for funding into priority list categories pursuant to the requirements of Section 116760.70, within each category, projects that do not include a component of growth, shall receive priority for funding over projects that have a component to accommodate a reasonable amount of growth.

(g) The Legislature further finds and declares that regional solutions to water contamination problems are often more effective, efficient, and economical than solutions designed to address solely the problems of a single small public water system, and it is in the interest of the people of the State of California to encourage the consolidation of the management and the facilities of small water systems to enable those systems to better address their water contamination problems.

(h) The protection of drinking water sources is essential to ensuring that the people of California are provided with pure, wholesome, and potable drinking water.

(i) That coordination among local, state, and federal public health and environmental management programs be undertaken to ensure that sources of drinking water are protected while avoiding duplication of effort and reducing program costs.

(j) It is necessary that a source water protection program be implemented for the purposes of delineating, assessing, and protecting drinking water sources throughout the state and that federal funds be utilized pursuant to the federal Safe Drinking Water Act (42 U.S.C. Sec. 300j et seq.) to carry out that program.

(k) It is in the interest of the people of the state to provide funds for a perpetual Safe Drinking Water State Revolving Fund that may be combined with similar federal funding to the extent the funding is authorized pursuant to the federal Safe Drinking Water Act (42 U.S.C. Sec. 300j et seq.).

(*l*) This chapter shall govern implementation of the Safe Drinking Water State Revolving Fund, and shall be implemented in a manner that is consistent with the federal Safe Drinking Water Act, and, to the extent authorized under the federal act, in a manner that is consistent with the California Safe Drinking Water Act, Chapter 4 (commencing with Section 116275).

Article 3. Safe Drinking Water State Revolving Fund

116760.20. Unless the context otherwise requires, the following definitions govern the construction of this chapter:

(a) "Cost-effective project" means a project that achieves an acceptable result at the most reasonable cost.

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

(c) "Federal Safe Drinking Water Act" or "federal act" means the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.) and acts amendatory thereof or supplemental thereto.

(d) "Fund" means the Safe Drinking Water State Revolving Fund created by Section 116760.30.

(e) "Funding" means a loan or grant, or both, awarded under this chapter.

(f) "Matching funds" means state money that equals that percentage of federal contributions required by the federal act to be matched with state funds.

(g) "Project" means proposed facilities for the construction, improvement, or rehabilitation of a public water system, and may include all items set forth in Section 116761 as necessary to carry out the purposes of this chapter. It also may include refinancing loans, annexation or consolidation of water systems, source water assessments, source water protection, and other activities specified under the federal act.

(h) "Public agency" means any city, county, city and county, district, or joint powers authority, that owns or operates a public water system.

(i) "Public water system" or "public water supply system" means a system for the provision to the public of water for human consumption, as defined in Chapter 4 (commencing with Section 116270), as it may be amended from time to time.

(j) "Reasonable amount of growth" means an increase in growth not to exceed 10 percent of the design capacity needed, based on peak flow, to serve the water demand in existence at the time plans and specifications for the project are approved by the department,

over the 20-year useful life of a project. For projects other than the construction of treatment plants including, but not limited to, storage facilities, pipes, pumps, and similar equipment, where the 10-percent allowable growth cannot be adhered to due to the sizes of equipment or materials available, the project shall be limited to the next available larger size.

(k) "Safe drinking water standards" means those standards established pursuant to Chapter 4 (commencing with Section 116270), as they may now or hereafter be amended.

(*l*) "Supplier" means any persons, partnership, corporation, association, public agency, or other entity that owns or operates a public water system.

116760.30. (a) There is hereby created in the State Treasury the Safe Drinking Water State Revolving Fund for the purpose of implementing this chapter, and, notwithstanding Section 13340 of the Government Code, the fund is hereby continuously appropriated, without regard to fiscal years, to the department to provide, from moneys available for this purpose, grants or revolving fund loans for the design and construction of projects for public water systems that will enable suppliers to meet safe drinking water standards. The department shall be responsible for administering the fund.

(b) The department shall report at least once every two years to the policy and budget committees of the Legislature on the implementation of this chapter and expenditures from the fund. The report shall describe the numbers and types of projects funded, the reduction in risks to public health from contaminants in drinking water provided through the funding of the projects, and the criteria used by the department to determine funding priorities.

116760.40. The department may undertake any of the following actions to implement the Safe Drinking Water State Revolving Fund:

(a) Enter into agreements with the federal government for federal contributions to the fund.

(b) Accept federal contributions to the fund.

(c) Use moneys in the fund for the purposes permitted by the federal act.

(d) Provide for the deposit of matching funds and any other available and necessary moneys into the fund.

(e) Make requests on behalf of the state for deposit into the fund of available federal moneys under the federal act.

(f) Determine on behalf of the state that public water systems that receive financial assistance from the fund will meet the requirements of, and otherwise be treated as required by, the federal act.

(g) Provide for appropriate audit, accounting, and fiscal management services, plans, and reports relative to the fund.

(h) Take such additional incidental action as may be appropriate for adequate administration and operation of the fund.

(i) Enter into an agreement with, and accept matching funds from, a public water system. A public water system that seeks to enter into an agreement with the department and provide matching funds pursuant to this subdivision shall provide to the department evidence of the availability of those funds in the form of a written resolution, or equivalent document, from the public water system before it requests a preliminary loan commitment.

(j) Charge public water systems that elect to provide matching funds a fee to cover the actual cost of obtaining the federal funds pursuant to Section 1452(e) of the federal act (42 U.S.C.A. Sec. 300j-12) and to process the loan application. The fee shall be waived by the department if sufficient funds to cover those costs are available from other sources.

(k) Use money returned to the fund under Section 116761.85 and any other source of matching funds, if not prohibited by statute, as matching funds for the federal administrative allowance under Section 1452(g) of the federal act (42 U.S.C.A. Sec. 300j-12).

(*l*) Establish separate accounts or subaccounts as required or allowed in the federal act and related guidance, for funds to be used for administration of the fund and other purposes. Within the fund the department shall establish the following accounts, including, but not limited to:

(1) A fund administration account for state expenses related to administration of the fund pursuant to Section 1452(g)(2) of the federal act.

(2) A water system reliability account for department expenses pursuant to Section 1452(g)(2)(A), (B), (C), or (D) of the federal act.

(3) A source protection account for state expenses pursuant to Section 1452(k) of the federal act.

(4) A small system technical assistance account for department expenses pursuant to Section 1452(g)(2) of the federal act.

(5) A state revolving loan account pursuant to Section 1452(a)(2) of the federal act.

(m) Deposit federal funds for administration and other purposes into separate accounts or subaccounts as allowed by the federal act.

(n) Determine on behalf of the state whether sufficient progress is being made toward compliance with the enforceable deadlines, goals, and requirements of the federal act and the California Safe Drinking Water Act, Chapter 4 (commencing with Section 116275).

116760.41. Moneys in the fund and the special accounts may be expended for additional purposes provided in the federal act.

116760.42. (a) The department may enter into an agreement with the federal government for federal contributions to the fund only if both of the following apply:

(1) The state has obtained or appropriated any required state matching funds.

(2) The department is prepared to commit to expenditure of any minimum amount in the fund in the manner required by the federal act.

(b) Any agreement between the department and the federal government shall contain those provisions, terms, and conditions required by the federal act, and any implementing federal rules, regulations, guidelines, and policies, including, but not limited to, agreement to the following:

(1) Moneys in the fund shall be expended in an expeditious and timely manner.

(2) All moneys in the fund as a result of federal capitalization grants shall be expended to ensure sufficient progress is being made toward compliance with the enforceable deadlines, goals, and requirements of the federal act, including any applicable compliance deadlines.

(3) Federal funds deposited in the special accounts are continuously appropriated for use by the department as allowed by federal law. Any unexpended funds in the special accounts shall be carried over into subsequent years for use by the department.

116760.43. (a) The department may adopt emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code necessary or convenient to implement this chapter and to meet requirements pursuant to the federal act.

(b) The adoption of any emergency regulations that are filed with the Office of Administrative Law within 18 months of the effective date of this act shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

116760.44. The department may deposit administrative fees and charges paid by public water systems and other available and necessary money into the administrative account of the fund.

Article 4. Establishment and Utilization of Priority List for Funding

116760.50. The department shall establish criteria that shall be met for projects to be eligible for consideration for funding under this chapter. The criteria shall include all of the following:

(a) All preliminary design work for a defined project that will enable the applicant to supply water that meets safe drinking water standards, including a cost estimate for the project, shall be completed.

(b) A legal entity shall exist that has the authority to enter into contracts and incur debt on behalf of the community to be served and owns the public water system or has the right to operate the public water system under a lease with a term of at least 20 years, unless otherwise authorized by the department. If the proposed project is

funded by a loan under this chapter, the department may require the applicant to secure a lease for the full term of the loan if the loan exceeds 20 years.

(c) The applicant shall hold all necessary water rights.

(d) The applicant shall have completed any review required pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and the guidelines adopted pursuant thereto, and have included plans for compliance with that act in its preliminary plans for the project.

(e) The applicant has assembled sufficient financial data to establish its ability to complete the proposed project and to establish the amount of debt financing it can undertake.

116760.60. The department shall notify suppliers that may be eligible for funding pursuant to this chapter of the purposes of this chapter and the regulations established by the department.

116760.70. (a) The department, after public notice and hearing, shall, from time to time, establish a priority list of proposed projects to be considered for funding under this chapter. In doing so, the department shall determine if improvement or rehabilitation of the public water system is necessary to provide pure, wholesome, and potable water in adequate quantity at sufficient pressure for health, cleanliness, and other domestic purposes. The department shall establish criteria for placing public water systems on the priority list for funding which shall include criteria for priority list categories. Priority shall be given to projects that meet all of the following requirements:

(1) Address the most serious risk to human health.

(2) Are necessary to ensure compliance with requirements of Chapter 4 (commencing with Section 116270) including requirements for filtration.

(3) Assist systems most in need on a per household basis according to affordability criteria.

(b) The department may, in establishing a new priority list, merge those proposed projects from the existing priority list into the new priority list.

(c) In establishing the priority list, the department shall consider the system's implementation of an ongoing source water protection program or wellhead protection program.

(d) In establishing the priority list categories and the priority for funding projects, the department shall carry out the intent of the Legislature pursuant to subdivisions (e) and (f) of Section 116760.10 and do all of the following:

(1) Give priority to upgrade an existing system to meet drinking water standards.

(2) After giving priority pursuant to paragraph (1), consider whether the applicant has sought other funds when providing

funding for a project to upgrade an existing system and to accommodate a reasonable amount of growth.

(e) Consideration of an applicant's eligibility for funding shall initially be based on the priority list in effect at the time the application is received and the project's ability to proceed. If a new priority list is established during the time the application is under consideration, but before the applicant receives a letter of commitment, the department may consider the applicant's eligibility for funding based on either the old or new priority list.

(f) The department may change the ranking of a specific project on the priority lists at any time following the publication of the list if information, that was not available at the time of the publication of the list, is provided that justifies the change in the ranking of the project.

(g) The department shall provide one or more public hearings on the Intended Use Plan, the priority list, and the criteria for placing public water systems on the priority list. The department shall provide notice of the Intended Use Plan, criteria, and priority list not less than 30 days before the public hearing. The Intended Use Plan, criteria, and priority list shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall conduct duly noticed public hearings and workshops around the state to encourage the involvement and active input of public and affected parties, including, but not limited to, water utilities, local government, public interest, environmental, and consumer groups, public health groups, land conservation interests, health care providers, groups representing vulnerable populations, groups representing business and agricultural interests, and members of the general public, in the development and periodic updating of the Intended Use Plan and the priority list.

(h) The requirements of this section do not constitute an adjudicatory proceeding as defined in Section 11405.20 of the Government Code and Section 11410.10 of the Government Code is not applicable.

116760.79. Applications for funding under this chapter shall be made in the form and with the supporting material prescribed by the department.

116760.80. (a) The department shall determine, based on applications received, whether a particular applicant meets the criteria to be eligible for consideration.

(b) If the applicant does not meet the criteria, it may be considered for planning and preliminary engineering study funding. Applicants successfully completing a study are eligible for consideration for project design and construction funding after their study is completed and they have met the criteria to be eligible for consideration for project design and construction funding.

116760.90. (a) The department shall not approve an application for funding unless the department determines that the proposed study or project is necessary to enable the applicant to meet safe drinking water standards, and is consistent with an adopted countywide plan, if any. The department may refuse to fund a study or project if it determines that the purposes of this chapter may more economically and efficiently be met by means other than the proposed study or project. The department shall not approve an application for funding a project with a primary purpose to supply or attract future growth. The department may limit funding to costs necessary to enable suppliers to meet primary drinking water standards, as defined in Chapter 4 (commencing with Section 116270).

(b) With respect to applications for funding of project design and construction, the department shall also determine all of the following:

(1) Upon completion of the project, the applicant will be able to supply water that meets safe drinking water standards.

(2) The project is cost-effective.

(3) If the entire project is not to be funded under this chapter, the department shall specify which costs are eligible for funding.

Article 5. Project Eligibility, Funding, and Contracts

116761. Planning and preliminary engineering studies, project design, and construction costs eligible for funding under this chapter shall be established by the department and may include any of the following:

(a) Reasonable costs for the construction, improvement, or rehabilitation of facilities of the public water system, which may include water supply, treatment works, and all or part of a water distribution system, if necessary to carry out the purposes of this chapter.

(b) Reasonable costs associated with the consolidation of water systems, including, but not limited to, reasonable facility fees, connection fees, or similar charges.

(c) Reasonable costs of purchasing water systems, water rights, or watershed lands.

(d) Operation and maintenance costs only to the extent they are used in the startup and testing of the completed project. All other operation and maintenance costs shall be the responsibility of the supplier and shall not be considered as part of the project costs.

(e) Reasonable costs of establishing eligibility for funding under this chapter that were incurred before the department entered into a commitment to fund the project under this chapter.

(f) The acquisition of real property or interests therein only if the acquisition is integral to a project, and as otherwise limited in the federal act.

116761.20. (a) Planning and preliminary engineering studies, project design, and construction costs may be funded under this chapter by loans, or, in the case of public agencies, by grants or a combination of grants and loans.

(b) The department shall determine what portion of the full costs the public agency is capable of repaying and authorize funding in the form of a loan for that amount. The department shall authorize a grant only to the extent the department finds the public agency is unable to repay the full costs of a loan.

(c) At the request of the department, the Public Utilities Commission shall submit comments concerning the ability of suppliers, subject to its jurisdiction, to finance the project from other sources and to repay the loan.

116761.21. Not more than 30 percent and not less than 15 percent, provided that there are projects eligible for funding as prescribed in Section 116760.70, of the total amount deposited in the fund may be expended for grants. This amount shall be limited to disadvantaged communities specified in Section 1452(d) of the federal act (42 U.S.C.A. Sec. 300j-12).

116761.22. Loans for project design and construction shall be repaid over a term not longer than the useful life of the project constructed or 20 years, whichever is shorter, except as provided in the federal act.

116761.23. (a) The maximum amount of a grant permitted under this chapter for the planning and preliminary engineering studies, design, and construction of a single project is one million dollars ($1,000,000).

(b) Total funding under this article for planning and preliminary engineering studies, project design, and construction costs of a single project, whether in the form of a loan or a grant, or both, shall be determined by an assessment of affordability using criteria established by the department.

116761.24. Not less than 15 percent of the total amount deposited in the fund shall be expended for providing loans and grants to public water systems that regularly serve fewer than 10,000 persons to the extent those funds can be obligated for eligible projects.

116761.40. The failure or inability of any public water system to receive funds under this chapter or any other loan or grant program or any delay in obtaining the funds shall not alter the obligation of the system to comply in a timely manner with all applicable drinking water standards and requirements of the California Safe Drinking Water Act or the federal act.

Article 6. Contracts for Project Funding

116761.50. (a) The department may enter into contracts with applicants for grants or loans for the purposes set forth in this chapter. Any contract entered into pursuant to this section shall include only

terms and conditions consistent with this chapter and the regulations established under this chapter.

(b) The contract shall include all of the following terms and conditions that are applicable:

(1) An estimate of the reasonable cost of the project or study.

(2) An agreement by the department to loan or grant, or loan and grant, the applicant an amount that equals the portion of the costs found by the department to be eligible for a state loan or grant. The agreement may provide for disbursement of funds during the progress of the study or construction, or following completion of the study or construction, as agreed by the parties.

(3) An agreement by the applicant to proceed expeditiously with the project or study.

(4) An agreement by the applicant to commence operations of the project upon completion of the project, and to properly operate and maintain the project in accordance with the applicable provisions of law.

(5) In the case of a loan, an agreement by the applicant to repay the state, over a period not to exceed the useful life of the project or 20 years, whichever is shorter, except as provided in the federal act, or in the case of a study, over a period not to exceed five years, all of the following:

(A) The amount of the loan.

(B) The administrative fee specified in subdivision (a) of Section 116761.70.

(C) Interest on the principal, which is the amount of the loan plus the administrative fee.

(6) In the case of a grant, an agreement by the public agency to operate and maintain the water system for a period of 20 years, unless otherwise authorized by the department.

(c) The contract may include any of the following terms and conditions:

(1) An agreement by the supplier to adopt a fee structure that provides for the proper maintenance and operations of the project and includes a sinking fund for repair and replacement of the facilities in cases where appropriate. The fee structure shall also provide an acceptable dedicated source of revenue for the repayment of the amount of the loan, and the payment of administrative fees and interest.

(2) If the entire project is not funded pursuant to this chapter, the department may include a provision requiring the applicant to share the cost of the project or obtain funding from other sources.

(d) The department may require applicants to provide security for loan contracts.

116761.60. All funding received under this chapter shall be expended by the applicant within three years of the execution of the contract with the department or its designee. The three-year period may be extended, with the approval of the department, until five

years after the date the original contract, not including amendments, was executed.

Article 7. Safe Drinking Water State Revolving Fund Management

116761.62. (a) To the extent permitted by federal and state law, moneys in the fund may be expended to rebate to the federal government all arbitrage profits required by the federal Tax Reform Act of 1986 (P.L. 99-514) or any amendment thereof or supplement thereto. To the extent that this expenditure of the moneys in the fund is prohibited by federal or state law, any rebates required by federal law shall be paid from the General Fund or other sources, upon appropriation by the Legislature.

(b) Notwithstanding any other provisions of law or regulation, the department may enter into contracts or may procure those services and equipment that may be necessary to ensure prompt and complete compliance with any provisions relating to the fund imposed by either the federal Tax Reform Act of 1986 (P.L. 99-514) or the federal Safe Drinking Water Act.

116761.65. (a) The department shall annually establish the interest rate for loans made pursuant to this chapter at 50 percent of the average interest rate, computed by the true interest cost method, paid by the state on general obligation bonds issued in the prior calendar year. All loans made pursuant to this chapter shall carry the interest rate established for the calendar year in which the funds are committed to the loan, as of the date of the letter of commitment. The interest rate set for each loan shall be applied throughout the repayment period of the loan. Interest on the loan shall not be deferred.

(b) Notwithstanding subdivision (a), if the loan applicant is a public water system that is a disadvantaged community or provides matching funds, the interest rate on the loan shall be zero percent.

116761.70. (a) Not more than 4 percent of the capitalization grant may be used by the department for administering this chapter. The department may establish a reasonable schedule of administrative fees for loans, which shall be paid by the applicant to reimburse the state for the costs of the state administration of this chapter.

(b) Charges incurred by the Attorney General in protection of the state's interest in the use of repayment of grant and loan funds under this chapter shall be paid. These charges shall not be paid from funds allocated for administrative purposes, but shall be treated as a program expense not to exceed one-half of 1 percent of the total amount deposited in the fund.

116761.80. (a) The department may expend money repaid to the state pursuant to any contract executed under Section 116761.50 as necessary for the administration of contracts entered into by the

department under this chapter, but those expenditures may not in any year exceed 1.5 percent of the amount of principal and interest projected to be paid to the state in that year pursuant to this chapter.

(b) Charges incurred by the Attorney General in protecting the state's interest in the use of funds and repayment of funds under this chapter may be paid by the department from these funds, but those charges may not exceed one-half of 1 percent of the amount of principal and interest projected to be paid to the state in that year pursuant to this chapter.

(c) Any of these sums unexpended by the department at the end of any year shall automatically revert to the fund.

116761.85. Except as provided in Section 116761.80, all money repaid to the state pursuant to any contract executed under subdivision (a) of Section 116761.50, including interest payments and all interest earned on or accruing to any moneys in the fund, shall be deposited in the fund and shall be available in perpetuity, for expenditure for the purposes and uses permitted by this chapter and the federal act.

116761.86. To the extent amounts in the fund are not required for current obligation or expenditure, those amounts shall be invested in interest bearing obligations, and the interest earned shall become part of the fund.

Article 8. Source Water Protection Program

116762.60. (a) The department shall, contingent upon receiving federal capitalization grant funds, develop and implement a program to protect sources of drinking water. In carrying out this program, the department shall coordinate with local, state, and federal agencies that have public health and environmental management programs to ensure an effective implementation of the program while avoiding duplication of effort and reducing program costs. The program shall include the following:

(1) A source water assessment program to delineate and assess the drinking water supplies of public drinking water systems pursuant to Section 1453 of the federal act.

(2) A wellhead protection program to protect drinking water wells from contamination pursuant to Section 1428 of the federal act.

(3) Pursuant to Section 1452(k) of the federal act, the department shall set aside federal capitalization grant funds sufficient to carry out paragraphs (1) and (2) of subdivision (a).

(b) The department shall set aside federal capitalization grant funds to provide assistance to water systems pursuant to Section 1452(k) of the federal act for the following source water protection activities, to the extent that those activities are proposed:

(1) To acquire land or a conservation easement if the purpose of the acquisition is to protect the source water of the system from

contamination and to ensure compliance with primary drinking water regulations.

(2) To implement local, voluntary source water protection measures to protect source water in areas delineated pursuant to Section 1453 of the federal act, in order to facilitate compliance with primary drinking water regulations applicable to the water system under Section 1412 of the federal act or otherwise significantly further the health protection objectives of the federal and state acts.

(3) To carry out a voluntary, incentive-based source water quality protection partnership pursuant to Section 1454 of the federal act.

(c) The department shall conduct duly noticed public hearings, public workshops, focus groups, or meetings around the state to encourage the involvement and active input of public and affected parties in the development and periodic updating of the source water protection program adopted pursuant to this article. The notices shall contain basic information about the program in an understandable format and shall notify widely representative groups, including, but not limited to, federal, state, and local governmental agencies, water utilities, public interest, environmental, and consumer groups, public health groups, land conservation groups, health care providers, groups representing vulnerable populations, groups representing business and agricultural interests, and members of the general public. In addition, the department shall convene a technical advisory committee and a citizens' advisory committee made up of those representative groups to provide advice and direction on program development and implementation.

(d) The department shall submit a report to the Legislature every two years on its activities under this section. The report shall contain a description of each program for which funds have been set aside under this section, the effectiveness of each program in carrying out the intent of the federal and state acts, and an accounting of the amount of set aside funds used.

SEC. 16. Section 116875 of the Health and Safety Code is repealed.

SEC. 17. Section 116875 is added to the Health and Safety Code, to read:

116875. (a) No person shall use any pipe, pipe or plumbing fitting or fixture, solder, or flux that is not lead free in the installation or repair of any public water system or any plumbing in a facility providing water for human consumption, except when necessary for the repair of leaded joints of cast iron pipes.

(b) No person shall introduce into commerce any pipe, pipe or plumbing fitting, or fixture, that is not lead free, except for a pipe that is used in manufacturing or industrial processing.

(c) No person engaged in the business of selling plumbing supplies, except manufacturers, shall sell solder or flux that is not lead free.

(d) No person shall introduce into commerce any solder or flux that is not lead free unless the solder or flux bears a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.

(e) For the purposes of this section, "lead free" means not more than 0.2 percent lead when used with respect to solder and flux and not more than 8 percent when used with respect to pipes and pipe fittings. With respect to plumbing fittings and fixtures, "lead free" means not more than 4 percent by dry weight after August 6, 2002, unless the department has adopted a standard, based on health effects, for the leaching of lead.

SEC. 18. Section 116880 of the Health and Safety Code is amended to read:

116880. The department shall adopt building standards to implement Section 116875. The standards shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and shall be published in the State Building Standards Code located in Title 24 of the California Code of Regulations. The standards shall be enforced by the appropriate state and local building and health officials.

SEC. 19. Section 13169 is added to the Water Code, to read:

13169. (a) The state board is authorized to develop and implement a groundwater protection program as provided under the Safe Drinking Water Act, Section 300 and following of Title 42 of the United States Code, and any federal act that amends or supplements the Safe Drinking Water Act. The authority of the state board under this section includes, but is not limited to, the following:

(1) To apply for and accept state groundwater protection grants from the federal government.

(2) To take any additional action as may be necessary or appropriate to assure that the state's groundwater protection program complies with any federal regulations issued pursuant to the Safe Drinking Water Act or any federal act that amends or supplements the Safe Drinking Water Act.

(b) Nothing in this section is intended to expand the authority of the state board as authorized under the Porter-Cologne Water Quality Control Act (Div. 7 (commencing with Sec. 13000) Wat. C.).

SEC. 20. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to revise the law regulating drinking water in the state as soon as possible, and in order that the Safe Drinking Water State Revolving Fund Law of 1997 be available to public water systems, it is necessary that this act take effect immediately.

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CHAPTER 735

An act to add Sections 19507 and 19806.1 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 October 6, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 19507 is added to the Welfare and Institutions Code, to read:

19507. (a) The Legislature finds and declares that the department, in accordance with Section 19007, is the authorized recipient of gifts, bequests, and donations made to the department or to a school or institution administered by the department.

(b) There is, within the State Treasury, the Orientation Center for the Blind Trust Fund, which is hereby continuously appropriated, without regard to fiscal years, to the department for allocation to the Orientation Center for the Blind exclusively for the purposes specified in subdivision (c).

(c) (1) Moneys in the Orientation Center for the Blind Trust Fund shall be used to supplement, and not supplant, funding of services provided by the department, and shall be utilized only in accordance with the terms and conditions of the gifts or donations made to the fund and for the sole purpose of the betterment of the students of the program at the Orientation Center for the Blind.

(2) The department shall consult with the Orientation Center for the Blind Trust Fund Committee, which shall be created by the director, concerning the use of moneys in the fund.

(3) The Orientation Center for the Blind Trust Fund Committee shall be composed of three members, all of whom shall be graduates of the Orientation Center for the Blind. The director shall consider for appointment to the committee individuals who are members of groups of advocates for the blind. No more than one member of any group shall be appointed, and appointment shall be from a list of at least two nominees submitted by the group. The director shall appoint one member to be an at-large representative.

SEC. 2. Section 19806.1 is added to the Welfare and Institutions Code, to read:

19806.1. (a) Notwithstanding any other provision of law, for the 1997–98 fiscal year, each independent living center, except the Disability Resources Agency for Independent Living, the Independent Living Center of Kern County, and the Placer Independent Resource Services, shall receive, to the extent funds are appropriated by the Legislature, at least two hundred thirty-five

thousand dollars ($235,000) in base grant funds allocated by the department, excluding state incentive funds; Independent Living Center of Kern County and Placer Independent Resource Services shall each receive, to the extent funds are appropriated by the Legislature, at least twenty-four thousand dollars ($24,000) in base grant funds allocated by the department, excluding state incentive funds; and the Disability Research Agency for Independent Living shall receive no base grant funds.

(b) Notwithstanding any other provision of law, for the 1997–98 fiscal year, to the extent funds are appropriated by the Legislature, four hundred seventy-nine thousand dollars ($479,000) shall be allocated as state incentive funds pursuant to subdivisions (b) to (d), inclusive, of Section 19806.

(c) Notwithstanding any other provision of law, for the 1997–98 fiscal year, to the extent funds are appropriated by the Legislature, after allocation of base grant and state incentive funds pursuant to subdivisions (a) and (b), remaining funds shall be allocated among independent living centers on the basis of the ratio of the total of the general population in an independent living center's geographic service area as compared to the total of the general population in all independent living centers geographic services areas statewide, utilizing 1995 Department of Finance population data.

(d) This section shall become effective only if the Budget Act of 1997, Item 5160-101-001 (c) for independent living centers exceeds the $6,837,000 appropriated in the Budget Act of 1996 by $2,900,000 or more.

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 permit vitally needed funds to be made available for programs for disabled persons at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 736

An act to amend, renumber, and repeal Section 35294.1 of, to add Section 35294.2 to, and to add and repeal Sections 35294.1, 35294.6, 35294.7, 35294.8, and 35294.9 to, the Education Code, relating to school safety.

[Approved by Governor October 6, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. It is the intent of the Legislature that this act shall unite all existing statutes that relate to school safety and ensure compliance with their provisions by including the requirements of school safety provisions in each school's comprehensive school safety plan.

SEC. 2. Section 35294.1 is added to the Education Code, to read:

35294.1. (a) Each school district and county office of education is responsible for the overall development of comprehensive school safety plans for its schools operating any kindergarten and any of grades 1 to 12, inclusive.

(b) (1) Except as provided in subdivision (d) with regard to a small school district, the schoolsite council established pursuant to Section 52012 or 52852 shall write and develop a comprehensive school safety plan relevant to the needs and resources of that particular school.

(2) The schoolsite council may delegate this responsibility to a school safety planning committee made up of the following members:

(A) The principal or the principal's designee.

(B) One teacher who is a representative of the recognized certificated employee organization.

(C) One parent whose child attends the school.

(D) One classified employee who is a representative of the recognized classified employee organization.

(E) Other members, if desired.

(3) The schoolsite council shall consult with a representative from a law enforcement agency in the writing and development of the comprehensive school safety plan.

(4) In the absence of a schoolsite council, the members specified in paragraph (2) shall serve as the school safety planning committee.

(c) Nothing in this article shall limit or take away the authority of school boards as guaranteed under this code.

(d) (1) Subdivision (b) shall not apply to a small school district, as defined in paragraph (2), if the small school district develops a districtwide comprehensive school safety plan that is applicable to each schoolsite.

(2) As used in this article, "small school district" means a school district that has fewer than 2,501 units of average daily attendance in the 1997–98 fiscal year.

(e) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2000, deletes or extends that date.

SEC. 3. Section 35294.1 of the Education Code, as amended by Chapter 435 of the Statutes of 1993, is amended and renumbered to read:

35294.2. (a) The comprehensive school safety plan shall include, but not necessarily be limited to, the following:

(1) Assessing the current status of school crime committed on school campuses and at school-related functions.

(2) Identifying appropriate strategies and programs that will provide or maintain a high level of school safety and address the school's procedures for complying with existing laws related to school safety, which shall include the development of all of the following:

(A) Child abuse reporting procedures consistent with Article 2.5 (commencing with Section 11164) of Title 1 of Part 4 of the Penal Code.

(B) Disaster procedures, routine and emergency.

(C) Policies pursuant to subdivision (d) of Section 48915 for pupils who committed an act listed in subdivision (c) of Section 48915 and other school-designated serious acts which would lead to suspension, expulsion, or mandatory expulsion recommendations pursuant to Article 1 (commencing with Section 48900) of Chapter 6 of Part 27.

(D) Procedures to notify teachers of dangerous pupils pursuant to Section 49079.

(E) A sexual harassment policy, pursuant to subdivision (b) of Section 212.6.

(F) The provisions of any schoolwide dress code, pursuant to Section 35183, that prohibits pupils from wearing "gang-related apparel," if the school has adopted such a dress code. For those purposes, the comprehensive school safety plan shall define "gang-related apparel." The definition shall be limited to apparel that, if worn or displayed on a school campus, reasonably could be determined to threaten the health and safety of the school environment. Any schoolwide dress code established pursuant to this section and Section 35183 shall be enforced on the school campus and at any school-sponsored activity by the principal of the school or the person designated by the principal. For the purposes of this paragraph, "gang-related apparel" shall not be considered a protected form of speech pursuant to Section 48950.

(G) Procedures for safe ingress and egress of pupils, parents, and school employees to and from school.

(H) A safe and orderly environment conducive to learning at the school.

(I) The rules and procedures on school discipline adopted pursuant to Sections 35291 and 35291.5.

(b) It is the intent of the Legislature that schools develop comprehensive school safety plans using existing resources, including the materials and services of the School Safety Partnership, pursuant to Chapter 2.5 (commencing with Section 32260) of Part 19. It is also the intent of the Legislature that schools use the handbook developed and distributed by the School/Law Enforcement Partnership Program entitled "Safe Schools: A Planning Guide for Action" in conjunction with developing their plan for school safety.

(c) Grants to assist schools in implementing their comprehensive school safety plan shall be made available through the School Safety Partnership as authorized by Section 32262.

(d) Each schoolsite council or school safety planning committee in developing and updating a comprehensive school safety plan shall, where practical, consult, cooperate, and coordinate with other schoolsite councils or school safety planning committees.

(e) The comprehensive school safety plan shall be evaluated and amended, as needed, by the school safety planning committee no less than once a year to ensure that the comprehensive school safety plan is properly implemented. An updated file of all safety-related plans and materials shall be readily available for inspection by the public.

(f) The comprehensive school safety plan, as written and updated by the schoolsite council or school safety planning committee, shall be submitted for approval under subdivision (a) of Section 35294.8.

(g) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2000, deletes or extends that date.

SEC. 4. Section 35294.2 is added to the Education Code, to read:

35294.2. (a) School safety planning may include, but is not limited to, the following:

(1) Assessing the current status of school crime committed on school campuses and at school-related functions.

(2) Identifying appropriate strategies and programs that will provide or maintain a high level of school safety.

(3) Developing an action plan, in conjunction with local law enforcement agencies, for implementing appropriate safety strategies and programs and determining the fiscal impact of executing the strategies and programs. The action plan may identify available resources which will provide for implementation of the plan.

(4) Establishing a schoolwide dress code, pursuant to Section 35183, that prohibits pupils from wearing "gang-related apparel." For those purposes, the parties participating in the development of the comprehensive school safety plan shall define "gang-related apparel." The definition shall be limited to apparel that, if worn or displayed on a school campus reasonably could be determined to threaten the health and safety of the school environment. Any schoolwide dress code established pursuant to this section shall be enforced on the school campus and at any school-sponsored activity by the principal of the school or the person designated by the principal. For the purposes of this paragraph, "gang-related apparel" shall not be considered a protected form of speech pursuant to Section 48950.

(b) Existing schoolsite councils may be responsible for developing a safety plan. In any event, the plan may be developed with the participation of teachers, classified employees, parents, law

enforcement, school administrators, and, if deemed appropriate, students.

(c) It is the intent of the Legislature that schools develop school safety plans using existing resources, including the materials and services of the School Safety Partnership, pursuant to Chapter 2.5 (commencing with Section 32260) of Part 19. It is also the intent of the Legislature that schools use the handbook developed and distributed by the School/Law Enforcement Partnership Program entitled "Safe Schools: A Planning Guide for Action" in conjunction with developing their plan for school safety.

(d) It is the intent of the Legislature that schools shall not contract with private consultants to develop school safety plans.

(e) Grants to assist schools in implementing their school safety plan shall be made available through the School Safety Partnership as authorized by Section 32262 of the Education Code.

(f) Comprehensive school safety plans developed pursuant to Section 35294.1 and 35294.2, as those sections existed on December 31, 1999, shall be evaluated and amended, as needed, by the schoolsite council or the school safety planning committee, no less than once a year to ensure that the comprehensive school safety plan is properly implemented. An updated file of all safety-related plans and materials shall be readily available for inspection by the public.

(g) This section shall become operative on January 1, 2000.

SEC. 5. Section 35294.6 is added to the Education Code, to read:

35294.6. (a) Each school shall adopt its comprehensive school safety plan by September 1, 1998.

(b) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2000, deletes or extends that date.

SEC. 6. Section 35294.7 is added to the Education Code, to read:

35294.7. (a) In the event that the Superintendent of Public Instruction determines that there has been a willful failure to make any report required by this article, the Superintendent of Public Instruction shall do both of the following:

(1) Notify the school district or the county office of education in which the willful failure has occurred of the determination.

(2) Make an assessment of not more than five hundred dollars ($500) against that school district or county office of education. This may be accomplished by the deduction of the amount of the assessment from an apportionment made subsequent to the determination.

(b) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2000, deletes or extends that date.

SEC. 7. Section 35294.8 is added to the Education Code, to read:

35294.8. (a) In order to ensure compliance with this article, each school shall forward its comprehensive school safety plan to the school district or county office of education for approval.

(b) Before adopting its comprehensive school safety plan, the schoolsite council or school safety planning committee shall hold a public meeting at the schoolsite in order to allow members of the public the opportunity to express an opinion about the school safety plan.

(c) In order to ensure compliance with this article, each school district or county office of education shall notify the State Department of Education by October 15, 1998, of any schools that have not complied with Section 35294.1.

(d) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2000, deletes or extends that date.

SEC. 8. Section 35294.9 is added to the Education Code, to read:

35294.9. (a) Notwithstanding any other provision of law, a school, other than a school in a small school district, that submits a comprehensive school safety plan in existence on December 31, 1997, shall be deemed to have satisfied the requirements of this article as it exists on and after the effective date of the act that adds this section if the comprehensive school safety plan meets all of the requirements of Section 35294.2.

(b) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2000, deletes or extends that date.

SEC. 9. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

CHAPTER 737

An act to amend and renumber Section 69619.1 of, and to add Section 44392 to, the Education Code, relating to teachers.

[Approved by Governor October 6, 1997. Filed with Secretary of State October 7, 1997.]

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

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

(a) California has the largest class sizes in the nation and a teacher shortage of between 19,000 and 47,000 teachers is projected over the next five years.

(b) The need for new teachers has become especially critical with the implementation of the class size reduction program that began in the 1996–97 school year. It is projected that at least 26,000 new teachers will be immediately needed in kindergarten and grades 1 to 3, inclusive, to accommodate the additional smaller classes.

(c) The level at which individuals are receiving teaching credentials is not keeping pace with need and pupil population growth.

(d) In many school districts there are a number of classified employees who are enrolled in, who have been enrolled in, or who would be interested in enrolling in, a teacher training program leading to a teaching credential if they were provided assistance in applying for admission and financial aid for that purpose.

(e) School paraprofessionals who serve pupils in the public schools provide valuable instructional service to public school pupils. A program to enhance instructional competencies and to prepare school paraprofessionals to become teachers would result in improved services in terms of their role in the instructional program in the classroom and would assist in reducing classroom sizes.

SEC. 2. Section 44392 is added to the Education Code, to read:

44392. For the purposes of this article, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(a) "Institutions of higher education" means the California Community Colleges, the California State University, the University of California, and private institutions of higher education that offer an accredited teacher training program.

(b) "Program" means the California School Paraprofessional Teacher Training Program established pursuant to Section 44393.

(c) "Teaching paraprofessional" means the following job classifications: educational aide, special education aide, special education assistant, teacher associate, teacher assistant, teacher aide, pupil service aide, library aide, child development aide, child development assistant, and physical education aide.

(d) "Teacher training program" means any undergraduate or graduate program of instruction conducted by a campus of an institution of higher education that includes a developmentally sequenced career ladder to provide instruction, coursework, and clearly defined tasks for each level of the ladder, and that is designed to qualify students enrolled in the program for a teaching credential authorizing instruction in kindergarten and grades 1 to 12, inclusive.

SEC. 2.5. Section 44392 is added to the Education Code, to read:

44392. For the purposes of this article, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(a) "Institutions of higher education" means the California Community Colleges, the California State University, the University of California, and private institutions of higher education that offer an accredited teacher training program.

(b) "Program" means the California School Paraprofessional Teacher Training Program established pursuant to Section 44393.

(c) "Teaching paraprofessional" means the following job classifications: educational aide, special education aide, special education assistant, teacher associate, teacher assistant, teacher aide, pupil service aide, library aide, child development aide, child development assistant, and physical education aide.

(d) "Teacher training program" means any undergraduate or graduate program of instruction conducted by a campus of an institution of higher education that includes a developmentally sequenced career ladder to provide instruction, coursework, and clearly defined tasks for each level of the ladder, and that is designed to qualify students enrolled in the program for a teaching credential authorizing instruction in kindergarten and grades 1 to 12, inclusive.

SEC. 3. Section 69619.1 of the Education Code is amended and renumbered to read:

44393. (a) The California School Paraprofessional Teacher Training Program is hereby established for the purpose of recruiting paraprofessionals to participate in a pilot program designed to encourage them to enroll in teacher training programs and to provide instructional service as teachers in the public schools.

(b) On or before June 30, 1995, the Commission on Teacher Credentialing, in consultation with the Chancellor of the California Community Colleges, the Chancellor of the California State University, and representatives of certificated and classified employee organizations, shall select 12 or more school districts or county offices of education, each of which applies for that selection and has 300 or more classified employees, to participate in a pilot program for the recruitment of school paraprofessional employees who wish to enroll in teacher training programs. The commission shall ensure that a total of 600 school paraprofessionals are recruited from among the 12 participating school districts or county offices of education. The commission shall also require that at least 40 percent of the school paraprofessionals employed by each school district or county office of education selected to participate in the pilot program are members of racial and ethnic minority groups, as determined by data compiled under the California Basic Educational Data System maintained by the State Department of Education. The criteria adopted by the commission for the selection of school districts or

county offices of education to participate in the pilot program shall include the following:

(1) The extent to which the applicant district or county office of education demonstrates the capacity and willingness to accommodate the participation of school paraprofessionals of the district in teacher training programs conducted at institutions of higher education.

(2) The extent to which the applicant's plan for the implementation of its recruitment program involves the active participation of one or more local campuses of the California Community Colleges or the California State University in the development of coursework and teaching programs for participating school paraprofessionals. Each selected school district or county office of education shall be required to enter into a written articulation agreement with the participating campuses of the California Community Colleges and the California State University.

(3) The extent to which the applicant's plan for recruitment attempts to meet the demand for bilingual crosscultural teachers.

(4) The extent to which the applicant's plan for recruitment attempts to meet the demand for multiple subject credentialed teachers interested in teaching kindergarten or any of grades 1 to 3, inclusive. For purposes of this paragraph, each paraprofessional selected to participate shall have completed at least two years of undergraduate college or university coursework and shall have demonstrated an interest in obtaining a multiple subject teaching credential for teaching kindergarten or any of grades 1 to 3, inclusive.

(5) The extent to which the applicant's plan for recruitment attempts to meet the demand for special education teachers.

(6) The extent to which the applicant's plan for recruitment includes a developmentally sequenced series of job descriptions that lead from an entry-level school paraprofessional position to an entry-level teaching position in that district.

(c) Each selected school district or county office of education shall provide information and assistance to each school paraprofessional it recruits under the pilot program regarding admission to a teacher training program.

(d) The school district or county office of education shall recruit and organize groups, or "cohorts," of school paraprofessionals, of not less than 30 paraprofessionals in each cohort. Cohorts shall be organized to consist of school paraprofessionals having approximately equal academic experience and qualifications, as determined by the school district or county office of education. The members of each cohort shall enroll in the same campus, and shall be provided by the school district or county office of education with appropriate support and information throughout the course of their studies. Each school district or county office of education shall certify that it has received a commitment from each member of a cohort that he or she will complete one school year of classroom instruction in the

district or county office of education for each year that he or she receives assistance for books, fees, and tuition while attending a community college or a campus of the California State University under the program. To the extent possible, the members of each cohort shall proceed through the same waiver and credential programs. To the extent that any participant does not fulfill his or her obligation to complete one year of classroom instruction for each year of financial assistance he or she received under the program, the participant shall be required to repay the assistance. "Teacher training program," for the purposes of this article, means any undergraduate program of instruction conducted at a campus of the California Community Colleges, or undergraduate or graduate program conducted at a campus of the California State University, that is designed to qualify students enrolled in the program for a teaching credential authorizing instruction in kindergarten and grades 1 to 12, inclusive.

(e) The commission shall contract with an independent evaluator with a proven record of experience in assessing career-advancement teacher training programs to determine the success of the recruitment programs established pursuant to subdivision (b). The evaluation shall be made on an annual basis and shall include, but not be limited to, all of the following:

(1) The number, and racial and ethnic classifications, of school paraprofessionals successfully recruited under this article for participation in a teacher training program.

(2) The number, and racial and ethnic classifications, of school paraprofessionals participating in the pilot program who successfully complete the teacher training program each year.

(3) The total cost per person participating in the pilot program who successfully obtains a teaching credential, based upon all state, local, federal, and other sources of funding.

(4) The economic status of persons participating in the pilot program.

(5) A description of financial and other resources made available to each recruitment program by participating school districts or county offices of education, the California Community Colleges, the California State University, and other participating organizations.

(f) Each selected school district or county office of education shall report to the commission regarding the progress of each cohort of school paraprofessionals, and other information regarding its recruitment program as the commission may direct.

(g) No later than January 1, 1995, and again by January 1, 1996, and by January 1, 1997, the commission shall report to the Legislature regarding the status of the pilot program, including, but not limited to, the number of school paraprofessionals recruited, the academic progress of the school paraprofessionals recruited, the number of school paraprofessionals recruited who are subsequently employed as teachers in the public schools, the degree to which the program

meets the demand for bilingual and special education teachers, the degree to which the program or similar programs can meet that demand if properly funded and executed, and other effects upon the operation of the public schools.

(h) "Teaching paraprofessional," for the purposes of this article, includes the following job classifications: educational aide, special education aide, teacher associate, teacher assistant, teacher aide, pupil service aide, and library aide.

(i) "Local education agency," for the purposes of this article, includes county offices of education that can participate in the pilot programs.

(j) It is the intent of the Legislature that, commencing with the 1993–94 fiscal year, funding for the California School Paraprofessional Teacher Training Program be allocated to the Commission on Teacher Credentialing for grants to school districts pursuant to this section.

SEC. 3.5. Section 69619.1 of the Education Code is amended and renumbered to read:

44393. (a) The California School Paraprofessional Teacher Training Program is hereby established for the purpose of recruiting paraprofessionals to participate in a program designed to encourage them to enroll in teacher training programs and to provide instructional service as teachers in the public schools.

(b) Commencing on January 1, 1998, the Commission on Teacher Credentialing, in consultation with the Chancellor of the California Community Colleges, the Chancellor of the California State University, the President of the University of California, the chancellors of private institutions of higher education that offer accredited teacher training programs, and representatives of certificated and classified employee organizations, shall select 24 or more school districts or county offices of education representing rural, urban, and suburban areas that apply to participate in the program. The commission shall ensure that, at a minimum, a total of 600 school paraprofessionals are recruited from among the 24 or more participating school districts or county offices of education. The criteria adopted by the commission for the selection of school districts or county offices of education to participate in the program shall include all of the following:

(1) The extent to which the applicant school district or county office of education demonstrates the capacity and willingness to accommodate the participation of school paraprofessions of the school in teacher training programs conducted at institutions of higher education.

(2) The extent to which the applicant's plan for the implementation of its recruitment program involves the active participation of one or more local campuses of the participating institutions of higher education in the development of coursework and teaching programs for participating school paraprofessionals.

Each selected school district or county office of education shall be required to enter into a written articulation agreement with the participating campuses of the institutions of higher education.

(3) The extent to which the applicant's plan for recruitment attempts to meet the demand for bilingual crosscultural teachers.

(4) The extent to which the applicant's plan for recruitment attempts to meet the demand for multiple subject credentialed teachers interested in teaching kindergarten or any of grades 1 to 3, inclusive. For purposes of this paragraph, each paraprofessional selected to participate shall have completed at least two years of undergraduate college or university coursework and shall have demonstrated an interest in obtaining a multiple subject teaching credential for teaching kindergarten or any of grades 1 to 3, inclusive.

(5) The extent to which the applicant's plan for recruitment attempts to meet the demand for special education teachers.

(6) The extent to which the applicant's plan for recruitment includes a developmentally sequenced series of job descriptions that lead from an entry-level school paraprofessional position to an entry-level teaching position in that school district or county office of education.

(7) The extent to which the applicant's plan for recruitment attempts to meet its own specific teacher needs.

(8) The extent to which the applicant's plan for implementation of its recruitment program involves participation in a district internship program pursuant to Sections 44325, 44326, 44327, 44328, and 44830.3 or a university internship program pursuant to Article 3 (commencing with Section 44450) of Chapter 3.

(c) Each selected school district or county office of education shall provide information and assistance to each school paraprofessional it recruits under the program regarding admission to a teacher training program.

(d) The school district or county office of education shall recruit and organize groups, or "cohorts," of school paraprofessionals, of no more than 30, and no less than 10, paraprofessionals in each cohort. Cohorts shall be organized to consist of school paraprofessionals having approximately equal academic experience and qualifications, as determined by the school district or county office of education. The members of each cohort shall enroll in the same campus, and shall be provided by the school district or county office of education with appropriate support and information throughout the course of their studies. Each school district or county office of education shall certify that it has received a commitment from each member of a cohort that he or she will complete one school year of classroom instruction in the district or county office of education for each year that he or she receives assistance for books, fees, and tuition while attending an institution of higher education under the program. To the extent possible, the members of each cohort shall proceed through the same waiver and credential programs. To the extent that any participant

does not fulfill his or her obligation to complete one year of classroom instruction for each year of financial assistance he or she received under the program, the participant shall be required to repay the assistance.

(e) The commission shall contract with an independent evaluator with a proven record of experience in assessing career-advancement programs or teacher training programs to determine the success of the recruitment programs established pursuant to subdivision (b). The evaluation shall be made on an annual basis and shall include, but not be limited to, all of the following:

(1) The total cost per person participating in the program who successfully obtains a teaching credential, based upon all state, local, federal, and other sources of funding.

(2) The economic status of persons participating in the pilot program.

(3) A description of financial and other resources made available to each recruitment program by participating school districts or county offices of education, institutions of higher education, and other participating organizations.

(4) The extent to which pupil performance on standardized achievement tests has improved in classes taught by teachers who have successfully completed the program, in comparison to classes taught by other teachers who have equivalent teaching experience.

(5) The extent to which pupil dropout rates and other measures of delinquency have improved in classes taught by teachers who have successfully completed the program.

(6) The extent to which teachers who have successfully completed the program remain in the communities in which they reside and in which they teach.

(7) The attrition rate of teachers who have successfully completed the program.

(f) Each selected school district or county office of education shall report to the commission regarding the progress of each cohort of school paraprofessionals, and other information regarding its recruitment program as the commission may direct.

(g) No later than January 1, 1998, and annually thereafter, the commission shall report to the Legislature regarding the status of the pilot program, including, but not limited to, the number of school paraprofessionals recruited, the academic progress of the school paraprofessionals recruited, the number of school paraprofessionals recruited who are subsequently employed as teachers in the public schools, the degree to which the program meets the demand for bilingual and special education teachers, the degree to which the program or similar programs can meet that demand if properly funded and executed, and other effects upon the operation of the public schools.

(h) It is the intent of the Legislature that, commencing with the 1997–98 fiscal year, and each fiscal year thereafter, funding for the

California School Paraprofessional Teacher Training Program be allocated to the Commission on Teacher Credentialing for grants to school districts pursuant to this section. In no case shall grants to any school district exceed the equivalent of three thousand dollars ($3,000) annually per paraprofessional in the program. Funding for grants to school districts pursuant to this subdivision, shall be contingent upon an appropriation in the annual Budget Act.

SEC. 3. Section 2.5 of this bill adds Section 44392 to the Education Code as proposed by both this bill and AB 353. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, (2) each bill adds Section 44392 to the Education Code, and (3) this bill is enacted after AB 353, in which case Section 2 of this bill shall not become operative.

SEC. 4. Section 3.5 of this bill incorporates amendments to Section 69619.1 of the Education Code proposed by both this bill and AB 353. 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 69619.1 of the Education Code, and (3) this bill is enacted after AB 353, in which case Section 3 of this bill shall not become operative.

CHAPTER 738

An act to amend Sections 12517.3 and 13376 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 6, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 12517.3 of the Vehicle Code is amended to read:

12517.3. (a) (1) Applicants for an original certificate to drive a schoolbus, school pupil activity bus, youth bus, or general public paratransit vehicle shall be fingerprinted by the Department of the California Highway Patrol on a form provided or approved by the department for submission to the Department of Justice, utilizing the Applicant Expedite Service.

(2) 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.

(3) Upon implementation of an electronic fingerprinting program with terminals located statewide and managed by the Department of Justice, the Department of Justice shall provide the information required pursuant to this subdivision to the appropriate area office of the Department of the California Highway Patrol within three working days.

(b) Applicants for an original certificate to drive an ambulance shall submit a completed fingerprint card to the department.

SEC. 2. Section 13376 of the Vehicle Code is amended to read:

13376. (a) The department shall revoke a schoolbus, school pupil activity bus, youth bus, or general public paratransit driver certificate, and shall deny an application for that certificate, for any of the following causes:

(1) The applicant or certificate holder has been convicted of any sex offense as defined in Section 44010 of the Education Code.

(2) The applicant has, within the three years preceding the application date, either been convicted of a violation of Section 20001, 23103, 23104, 23152, or 23153, or has his or her driving privilege suspended, revoked, or placed on probation by the department for a cause involving the safe operation of a motor vehicle.

(3) The applicant has, within the two years preceding the application date, been convicted of any offense specified in Section 11361.5 of the Health and Safety Code.

(4) The applicant has failed to meet the prescribed testing requirements for issuance of the certificate.

(b) (1) The department shall revoke a certificate listed in subdivision (a), following an opportunity to challenge the validity of the testing described in this paragraph, for three years if the certificate holder has received a positive test result for a controlled substance, as specified in Part 382 (commencing with Section 382.101) of Title 49 of the Code of Federal Regulations and Section 34520. However, the department shall not revoke a certificate under this paragraph if the certificate holder is in compliance with any rehabilitation or return to duty program that is imposed by the employer that meets the controlled substances and alcohol use and testing requirements set forth in Part 382 (commencing with Section 382.101) of Title 49 of the Code of Federal Regulations.

(2) If an applicant receives a positive test result and has been provided an opportunity to challenge the validity of the test, the department shall deny the application for a certificate listed in subdivision (a) for three years from the date of the confirmed positive test result.

(3) The carrier that requested the test shall report the positive test result to the department not later than five days after receiving notification of the test result on a form approved by the department.

(4) The department shall maintain a positive test result reported under paragraph (3) in the driving record of the applicant or

certificate holder for three years from the date the department receives the report.

(c) (1) The department may temporarily suspend a schoolbus, school pupil activity bus, youth bus, or general public paratransit driver certificate, or temporarily withhold issuance of a certificate to an applicant, if the holder or applicant is arrested for or charged with any sex offense, as defined in Section 44010 of the Education Code.

(2) Upon receipt of a notice of temporary suspension, or of the department's intent to withhold issuance, of a certificate, the certificate holder or applicant may request a hearing within 10 days of the effective date of the department's action.

(3) The department shall, upon request of the holder of, or applicant for, a certificate, within 10 working days of the receipt of the request, conduct a hearing on whether the public interest requires suspension or withholding of the certificate pursuant to paragraph (1).

(4) If the charge is dismissed or results in a finding of not guilty, the department shall immediately terminate the suspension or resume the application process, and shall expunge the suspension action taken pursuant to this subdivision from the record of the applicant or certificate holder.

(d) An applicant or holder of a certificate may reapply for a certificate whenever a felony or misdemeanor conviction is reversed or dismissed. A termination of probation and dismissal of charges pursuant to Section 1203.4 of the Penal Code or a dismissal of charges pursuant to Section 1203.4a of the Penal Code is not a dismissal for purposes of this section.

(e) The determination of the facts pursuant to this section is a civil matter which is independent of the determination of the person's guilt or innocence, has no collateral estoppel effect on a subsequent criminal prosecution, and does not preclude the litigation of the same or similar facts in a criminal proceeding.

CHAPTER 739

An act to add Section 39831.3 to the Education Code, and to amend Section 22112 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 6, 1997. Filed with Secretary of State October 7, 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 "Thomas Edward Lanni Schoolbus Safety Act of 1997."

SEC. 2. Section 39831.3 is added to the Education Code, to read:

39831.3. (a) The county superintendent of schools, the superintendent of a school district, or the owner or operator of a private school that provides transportation to or from a school or school activity shall prepare a transportation safety plan containing procedures for school personnel to follow to ensure the safe transport of pupils. The plan shall be revised as required. The plan shall address all of the following:

(1) Determining if pupils require escort pursuant to paragraph (3) of subdivision (c) of Section 22112 of the Vehicle Code.

(2) (A) Procedures for all pupils in prekindergarten, kindergarten, and grades 1 to 8, inclusive, to follow as they board and exit the appropriate schoolbus at each pupil's schoolbus stop.

(B) Nothing in this paragraph requires a county superintendent of schools, the superintendent of a school district, or the owner or operator of a private school that provides transportation to or from a school or school activity, to use the services of an onboard schoolbus monitor, in addition to the driver, to carry out the purposes of this paragraph.

(3) Boarding and exiting a schoolbus at a school or other trip destination.

(b) A current copy of a plan prepared pursuant to subdivision (a) shall be retained by each school subject to the plan and made available upon request to an officer of the Department of the California Highway Patrol.

SEC. 3. Section 22112 of the Vehicle Code is amended to read:

22112. (a) On approach to a schoolbus stop where pupils are loading or unloading from a schoolbus, the driver of the schoolbus shall activate an approved flashing amber light warning system, if the bus is so equipped, beginning 200 feet before the bus stop. The driver shall operate the flashing red signal lights and stop signal arm, as required on the schoolbus, at all times when the schoolbus is stopped for the purpose of loading or unloading pupils. The flashing red signal lights, amber warning lights, and stop signal arm system shall not be operated at any place where traffic is controlled by a traffic officer. The schoolbus flashing red signal lights, amber warning lights, and stop signal arm system shall not be operated at any other time.

(b) The driver shall stop to load or unload pupils only at a schoolbus stop designated for pupils by the school district superintendent or authorized by the superintendent for school activity trips.

(c) When a schoolbus is stopped on a highway or private road for the purpose of loading or unloading pupils, at a location where traffic is not controlled by a traffic officer or official traffic control signal, the driver shall do all of the following:

(1) Check for approaching traffic in all directions and activate the flashing red light signal system and stop signal arm, as defined in Section 25257, if equipped with a stop signal arm.

(2) Before opening the door, ensure that the flashing red signal lights and stop signal arm are activated, and that it is safe to exit the schoolbus.

(3) Escort all pupils in prekindergarten, kindergarten, or any of grades 1 to 8, inclusive, who need to cross the highway or private road. The driver shall use an approved hand-held "STOP" sign while escorting all pupils.

(4) Require all pupils to walk in front of the bus as they cross the highway or private road.

(5) Ensure that all pupils who need to cross the highway or private road have crossed safely, and that all other unloaded pupils and pedestrians are a safe distance from the bus and it is safe to move before setting the bus in motion.

(d) The flashing red signal lights and stop signal arm requirements imposed by subdivision (a) do not apply to locations identified by a school district, in consultation with the Department of the California Highway Patrol, that are determined to present a unique traffic hazard due to roadway design or proximity to an intersection, or where special education pupils are boarding or pupils may require assistance to board or unload the schoolbus or school pupil activity bus.

CHAPTER 740

An act to amend Section 422.75 of the Penal Code, relating to crimes.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 422.75 of the Penal Code is amended to read:

422.75. (a) Except in the case of a person punished under Section 422.7, a person who commits a felony or attempts to commit a felony because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(b) Except in the case of a person punished under Section 422.7 or subdivision (a) of this section, any person who commits a felony or attempts to commit a felony against the property of a public agency or private institution, including a school, educational facility, library or community center, meeting hall, place of worship, or offices of an advocacy group, or the grounds adjacent to, owned, or rented by the public agency or private institution, because the

property of the public agency or private institution is identified or associated with a person or group of an identifiable race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(c) Except in the case of a person punished under Section 422.7 or subdivision (a) or (b) of this section, any person who commits a felony, or attempts to commit a felony, because of the victim's race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics, and who voluntarily acted in concert with another person, either personally or by aiding and abetting another person, shall receive an additional two, three, or four years in the state prison, at the court's discretion.

(d) For the purpose of imposing an additional term under subdivision (a) or (c), it shall be a factor in aggravation that the defendant personally used a firearm in the commission of the offense. Nothing in this subdivision shall preclude a court from also imposing a sentence enhancement pursuant to Section 12022.5 or 12022.55, or any other law.

(e) A person who is punished pursuant to this section also shall receive an additional term of one year in the state prison for each prior felony conviction on charges brought and tried separately in which it was found by the trier of fact or admitted by the defendant that the crime was committed because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, or sexual orientation, or that the crime was committed because the defendant perceived that the victim had one or more of those characteristics. This additional term shall only apply where a sentence enhancement is not imposed pursuant to Section 667 or 667.5.

(f) Any additional term authorized by this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(g) Any additional term imposed pursuant to this section shall be in addition to any other punishment provided by law.

(h) Notwithstanding any other law, the court may strike any additional term imposed by this section if the court determines that there are mitigating circumstances and states on the record the reasons for striking the additional punishment.

CHAPTER 741

An act to amend, repeal, and add Section 19.8 of, and to add and repeal Section 652 of, the Penal Code, relating to body piercing.

[Approved by Governor October 7, 1997. Filed with
Secretary of State October 7, 1997.]

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

SECTION 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; 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. 1.5. 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. 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; 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. 2.5. 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. 3. Section 652 is added to the Penal Code, to read:

652. (a) It shall be an infraction for any person to perform or offer to perform body piercing upon a person under the age of 18 years, unless the body piercing is performed in the presence of, or as directed by a notarized writing by, the person's parent or guardian.

(b) This section does not apply to the body piercing of an emancipated minor.

(c) As used in this section, "body piercing" means the creation of an opening in the body of a human being for the purpose of inserting jewelry or other decoration. This includes, but is not limited to, piercing of a lip, tongue, nose, or eyebrow. "Body piercing" does not include the piercing of an ear.

(d) Neither the minor upon whom the body piercing was performed, nor the parent or guardian of that minor, nor any other minor is liable for punishment under this section.

(e) 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. 4. Sections 1.5 and 2.5 of this bill incorporate amendments to Section 19.8 of the Penal Code proposed by both this bill and AB 1390. 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 1390 in which case Sections 1 and 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.

SEC. 6. This act shall become operative only if Assembly Bill 186 is also enacted and becomes effective on or before January 1, 1998.

CHAPTER 742

An act to add Chapter 7 (commencing with Section 119300) to Part 15 of Division 104 of the Health and Safety Code, relating to health.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Chapter 7 (commencing with Section 119300) is added to Part 15 of Division 104 of the Health and Safety Code, to read:

CHAPTER 7. TATTOOING, BODY PIERCING, AND PERMANENT COSMETICS

119300. For purposes of this chapter, the following definitions shall apply:

(a) "Tattooing" means to insert pigment under the surface of the skin of a human being, by pricking with a needle or otherwise, to produce an indelible mark or figure visible through the skin.

(b) "Body piercing" means the creation of an opening in the body of a human being for the purpose of inserting jewelry or other decoration. This includes, but is not limited to, piercing of an ear, lip, tongue, nose, or eyebrow. "Body piercing" does not, for the purpose of this chapter, include piercing an ear with a disposable, single-use stud or solid needle that is applied using a mechanical device to force the needle or stud through the ear.

(c) "Permanent cosmetics" means the application of pigments to or under the skin of a human being for the purpose of permanently changing the color or other appearance of the skin. This includes, but is not limited to, permanent eyeliner, eye shadow, or lip color.

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

119301. The California Conference of Local Health Officers shall establish sterilization, sanitation, and safety standards for persons engaged in the business of tattooing, body piercing, or permanent cosmetics. The department shall provide the necessary resources to support the development of these standards. The California Conference of Local Health Officers shall consult and adopt, to the extent appropriate, the Bloodborne Pathogen Standard (Section 5193 of Title 8 of the California Code of Regulations) of the Department of Industrial Relations, Division of Occupational Safety and Health. The standards shall be directed at establishment and maintenance of sterile conditions and safe disposal of instruments. The standards may be modified as appropriate to protect consumers from transmission of contagious diseases through cross-contamination of instruments and supplies. The standards shall be submitted to the department for review and consultation by July 1, 1998.

119302. Within 30 days after standards are adopted by the department, the department shall distribute those standards in written form to all county health departments.

119303. (a) Every person engaged in the business of tattooing, body piercing, or permanent cosmetics shall register by December 31, 1998, with the county health department of the county in which that business is conducted. A registrant shall do all of the following:

(1) Obtain a copy of the department's standards from the county health department, sign an acknowledgment upon receipt of the standards, and commit to meet the standards.

(2) Provide the county health department with his or her business address and the address at which the registrant performs any activity regulated by this article.

(3) Pay a one-time registration fee of twenty-five dollars ($25), to be paid directly to the county health department.

(4) Pay an annual inspection fee of one hundred five dollars ($105) to the county health department.

(b) This section does not preclude a county from charging an additional amount if necessary to cover the cost of registration and inspection.

(c) Fees established by this act shall be used exclusively in support of activities pursuant to this chapter.

119304. Every county health department shall conduct annual inspections of the locations at which registrants under this article conduct regulated activities.

119305. (a) A county may adopt any regulations that do not conflict with, or are more comprehensive than, the provisions of this chapter or with the standards adopted by the department.

(b) This chapter does not limit a county's ability to require a registrant to obtain any business license or permit that the county finds appropriate.

(c) In those jurisdictions where the local health officer and the environmental health director are in separate departments, the county or city shall have the option to choose the entity responsible for functions pursuant to this subdivision.

119306. A person who fails to register as provided by Section 119303 or violates the sterilization, sanitation, and safety standards after December 31, 1998, shall be subject to a civil penalty of five hundred dollars ($500) per violation. This penalty may be collected in an action brought by the prosecuting attorney of any county or city and county in which the violation occurred. All penalties collected shall be retained by the county.

119307. On or after January 1, 1999, any person seeking to engage in the business of tattooing, body piercing, or permanent cosmetics shall comply with the provisions of this chapter.

119308. The president of the California Conference of Local Health Officers shall act as the chairperson of a task force to be formed for the purpose of recommending legislation to the Legislature concerning licensing, training, sanitation, and other subjects deemed necessary to protect the health and welfare of persons seeking the services of practitioners of tattooing, body piercing, and permanent cosmetics. The task force shall be composed of 10 persons to be appointed by the president of the California Conference of Local Health Officers, and shall include a representative from the State Board of Barbering and Cosmetology, a physician and surgeon licensed in this state, a representative from a nonprofit professional body piercers' association, a representative from a nonprofit professional tattooists' association, a representative from a nonprofit professional permanent cosmetic association, a representative from a nonprofit professional cosmetology association, and a representative from an organization representing the interests of local health departments. The president of the California Conference of Local Health Officers may appoint the

remaining three members from any other groups that may, in the judgment of the president, be of assistance. The task force shall present its recommendations to the Legislature by January 1, 1999.

119309. This chapter does not restrict the activities of any physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2.

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.

SEC. 3. This act shall become operative only if Assembly Bill 99 is also enacted and becomes effective on or before January 1, 1998.

CHAPTER 743

An act to add Section 14602.7 to the Vehicle Code, relating to vehicles.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 14602.7 is added to the Vehicle Code, to read:

14602.7. (a) A magistrate presented with the affidavit of a peace officer establishing reasonable cause to believe that a vehicle, described by vehicle type and license number, was an instrumentality used in the peace officer's presence in violation of Sections 2800.1, 2800.2, 2800.3, or 23103, shall issue a warrant or order authorizing any peace officer to immediately seize and cause the removal of the vehicle. The warrant or court order may be entered into a computerized data base. A vehicle so impounded may be impounded for a period not to exceed 30 days.

The impounding agency, within two working days of impoundment, shall send a notice by certified mail, return receipt requested, to the legal owner of the vehicle, at the address obtained from the department, informing the owner that the vehicle has been impounded and providing the owner with a copy of the warrant or

court order. Failure to notify the legal owner within two working days shall prohibit the impounding agency from charging for more than 15 days impoundment when a legal owner redeems the impounded vehicle.

(b) (1) An impounding agency shall release a vehicle to the registered owner or his or her agent prior to the end of the impoundment period and without the permission of the magistrate authorizing the vehicle's seizure under any of the following circumstances:

(A) When the vehicle is a stolen vehicle.

(B) When the vehicle is subject to bailment and is driven by an unlicensed employee of the business establishment, including a parking service or repair garage.

(C) When the registered owner of the vehicle causes a peace officer to reasonably believe, based on the totality of the circumstances, that the registered owner was not the driver who violated Section 2800.1, 2800.2, or 2800.3, the agency shall immediately release the vehicle to the registered owner or his or her agent.

(2) No vehicle shall be released pursuant to this subdivision, except upon presentation of the registered owner's or agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of the court.

(c) (1) Whenever a vehicle is impounded under this section, the magistrate ordering the storage shall provide the vehicle's registered and legal owners of record, or their agents, with the opportunity for a poststorage hearing to determine the validity of the storage.

(2) A notice of the storage shall be mailed or personally delivered to the registered and legal owners with 48 hours after issuance of the warrant or court order, excluding weekends and holidays, by the person or agency executing the warrant or court order, and shall include all of the following information:

(A) The name, address, and telephone number of the agency providing the notice.

(B) The location of the place of storage and a description of the vehicle, which shall include, if available, the name or make, the manufacturer, the license plate number, and the mileage of the vehicle.

(C) A copy of the warrant or court order and the peace officer's affidavit, as described in subdivision (a).

(D) A statement that, in order to receive their poststorage hearing, the owners, or their agents, are required to request the hearing from the magistrate issuing the warrant or court order in person, in writing, or by telephone, within 10 days of the date of the notice.

(3) The poststorage hearing shall be conducted within two court days after receipt of the request for the hearing.

(4) At the hearing, the magistrate may order the vehicle released if he or she finds any of the circumstances described in subdivision (b) or (e) that allow release of a vehicle by the impounding agency. The magistrate may also consider releasing the vehicle when the continued impoundment will cause undue hardship to persons dependent upon the vehicle for employment or to a person with a community property interest in the vehicle.

(5) Failure of either the registered or legal owner, or his or her agent, to request, or to attend, a scheduled hearing satisfies the poststorage hearing requirement.

(6) The agency employing the peace officer who caused the magistrate to issue the warrant or court order shall be responsible for the costs incurred for towing and storage if it is determined in the poststorage hearing that reasonable grounds for the storage are not established.

(d) The registered owner or his or her agent is responsible for all towing and storage charges related to the impoundment, and any administrative charges authorized under Section 22850.5.

(e) A vehicle removed and seized under subdivision (a) shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of the impoundment period and without the permission of the magistrate authorizing the seizure of the vehicle if all of the following conditions are met.

(1) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state or is another person, not the registered owner, holding a financial interest in the vehicle.

(2) The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure of the vehicle. No lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the 15th day of impoundment.

(3) The legal owner or the legal owner's agent presents foreclosure documents or a certificate of repossession and a document of title showing proof of legal ownership for the vehicle.

(f) (1) A legal owner or the legal owner's agent that obtains release of the vehicle pursuant to subdivision (e) shall not release the vehicle to the registered owner of the vehicle or any agents of the registered owner, unless a registered owner is a rental car agency, until the termination of the impoundment period.

(2) The legal owner or the legal owner's agent shall not relinquish the vehicle to the registered owner until the registered owner or that owner's agent presents his or her valid driver's license or valid temporary driver's license to the legal owner or the legal owner's agent. The legal owner or the legal owner's agent shall make every reasonable effort to ensure that the license presented is valid.

(3) Prior to relinquishing the vehicle, the legal owner may require the registered owner to pay all towing and storage charges related to the impoundment and the administrative charges authorized

under Section 22850.5 that were incurred by the legal owner in connection with obtaining the custody of the vehicle.

(g) (1) A vehicle impounded and seized under subdivision (a) shall be released to a rental car agency prior to the end of the impoundment period if the agency is either the legal owner or registered owner of the vehicle and the agency pays all towing and storage fees related to the seizure of the vehicle.

(2) The owner of a rental vehicle that was seized under this section may continue to rent the vehicle upon recovery of the vehicle. However, the rental car agency shall not rent another vehicle to the driver who used the vehicle that was seized to evade a police officer until 30 days after the date that the vehicle was seized.

(3) The rental car agency may require the person to whom the vehicle was rented and who evaded the peace officer to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the rental car agency in connection with obtaining custody of the vehicle.

(h) Notwithstanding any other provision of this section, the registered owner and not the legal owner shall remain responsible for any towing and storage charges related to the impoundment and the administrative charges authorized under Section 22850.5 and any parking fines, penalties, and administrative fees incurred by the registered owner.

(i) (1) This section does not apply to vehicles abated under the Abandoned Vehicle Abatement Program pursuant to Sections 22660 to 22668, inclusive, and Section 22710, or to vehicles impounded for investigation pursuant to Section 22655, or to vehicles removed from private property pursuant to Section 22658

(2) This section does not apply to abandoned vehicles removed pursuant to Section 22669 that are determined by the public agency to have an estimated value of three hundred dollars ($300) or less.

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 744

An act to amend Section 12050 of the Penal Code, relating to concealed weapons.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 7, 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) The sheriff of a county or 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 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:

(A) A license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) 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.

(2) The sheriff of a county or 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 person who has been deputized or appointed as a peace officer pursuant to subdivision (a) or (b) of Section 830.6 by that sheriff or that chief of police or other head of a municipal police department, may issue to that person a license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person. Direct or indirect fees for the issuance of a license pursuant to this paragraph may be waived. The fact that an applicant for a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person has been deputized or appointed as a peace officer pursuant to subdivision (a) or (b) of Section 830.6 shall be considered only for the purpose of issuing a license pursuant to this paragraph, and shall not be considered for the purpose of issuing a license pursuant to paragraph (1).

(3) A license issued pursuant to paragraph (1) is valid for any period of time not to exceed one year from the date of the license. A license issued pursuant to paragraph (2) to a peace officer appointed pursuant to Section 830.6 is valid for any period of time not to exceed three years from the date of the license, except that the license shall be invalid upon the conclusion of the person's appointment pursuant to Section 830.6 if the three-year period has

not otherwise expired or any other condition imposed pursuant to this section does not limit the validity of the license to a shorter time period.

(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.

SEC. 2. 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.

(C) The sheriff of a county or 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 person who has been deputized or appointed as a peace officer pursuant to subdivision (a) or (b) of Section 830.6 by that sheriff or that chief of police or other head of a municipal police department, may issue to that person a license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person. Direct or indirect fees for the issuance of a license pursuant to this subparagraph may be waived. The fact that an applicant for a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person has been deputized or appointed as a peace officer pursuant to subdivision (a) or (b) of Section 830.6 shall be considered only for the purpose of issuing a license pursuant to this subparagraph, and shall not be considered for the purpose of issuing a license pursuant to subparagraph (A) or (B).

(2) A license issued pursuant to subparagraph (A) or (B) of paragraph (1) is valid for any period of time not to exceed one year from the date of the license. A license issued pursuant to subparagraph (C) of paragraph (1) to a peace officer appointed pursuant to Section 830.6 is valid for any period of time not to exceed three years from the date of the license, except that the license shall be invalid upon the conclusion of the person's appointment pursuant to Section 830.6 if the three-year period has not otherwise expired or any other condition imposed pursuant to this section does not limit the validity of the license to a shorter time period.

(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.

SEC. 3. Section 2 of this bill incorporates amendments to Section 12050 of the Penal Code proposed by both this bill and SB 146. 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 12050 of the Penal Code, and (3) this bill is enacted after SB 146, in which case Section 1 of this bill shall not become operative.

CHAPTER 745

An act to amend Sections 41865, 44535, and 44537.5 of, and to add Chapter 4.5 (commencing with Section 39750) to Part 2 of Division 26 of, the Health and Safety Code, relating to air pollution.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Chapter 4.5 (commencing with Section 39750) is added to Part 2 of Division 26 of the Health and Safety Code, to read:

CHAPTER 4.5. RICE STRAW DEMONSTRATION PROJECT

39750. The Legislature hereby finds and declares that the Connelly-Areias-Chandler Rice Straw Burning Reduction Act was enacted in 1991 to phase down rice straw burning and improve the air quality for the citizens of the state. This creates an additional significant cost to rice growers, with potential adverse impacts on the farming communities, including lost farm production; lost state, local, and federal tax revenues; lost jobs; and reduction of wildlife habitat in the rice fields. The commercial technologies that could utilize straw, making it a commodity rather than a waste disposal problem, have not developed in the rice growing areas because of the lack of marketplace risk capital to take technologies from the laboratory stage to demonstration projects. To retain the public benefits from having a viable rice growing industry in California and to improve air quality, there is a need to provide cost-sharing grants for the development of demonstration projects for new rice straw technologies in the marketplace.

39751. The Rice Straw Demonstration Project Fund is hereby created in the State Treasury. The fund shall be administered by the state board for the purpose of developing demonstration projects for new rice straw technologies in the rice straw growing regions of California.

39752. The state board shall provide cost-sharing grants for the development of demonstration projects for new rice straw technologies according to criteria developed by the state board, in

consultation with the University of California, the Trade and Commerce Agency, and the Department of Food and Agriculture, and adopted at a noticed public hearing held by the state board. The criteria shall include, but shall not be limited to, all of the following:

(a) Proposed projects shall use a technology that could use significant volumes of rice straw annually if it is commercialized, based upon such factors as potential markets and viability of the technology in meeting market demands.

(b) The state board shall provide not more than 50 percent of the cost for each demonstration project.

(c) Public and private support shall be demonstrated for proposed projects, including local community support from the rice growing community where the project would be located.

(d) The grants shall be authorized and allocated during the 1997–98 and 1998–99 fiscal years. Grants may be expended, under the grant agreement, during a period not to exceed three years from the date that the grant is awarded.

(e) Preference shall be given to projects located within the rice growing regions of the Sacramento Valley and which may be replicated throughout the region.

(f) Projects should demonstrate technical and economic feasibility.

39753. It is the intent of the Legislature that funding for purposes of this chapter be provided in the annual Budget Act. The state board may use not more than 10 percent of the rice straw technology demonstration cost-sharing funds for administrative and project review costs in carrying out the grant program.

SEC. 2. Section 41865 of the Health and Safety Code is amended to read:

41865. (a) This section shall be known, and may be cited, as the Connelly-Areias-Chandler Rice Straw Burning Reduction Act of 1991.

(b) As used in this section:

(1) "Sacramento Valley Air Basin" means the area designated by the state board pursuant to Section 39606.

(2) "Air pollution control council" means the Sacramento Valley Basinwide Air Pollution Control Council authorized pursuant to Section 40900.

(3) "Conditional rice straw burning permit" means a permit to burn granted pursuant to subdivisions (f) and (h).

(4) "Allowable acres to be burned" means the number of acres that may be burned pursuant to subdivision (c).

(5) "Department" means the Department of Food and Agriculture.

(6) "Maximum fall burn acres" means the maximum amount of rice acreage that may be burned from September 1 to December 31, inclusive, of each year.

(7) "Maximum spring burn acres" means the maximum amount of rice acreage that may be burned from January 1 to May 31 of the following year, inclusive.

(c) Notwithstanding Section 41850, rice straw burning in counties in the Sacramento Valley Air Basin shall be phased down, as follows:

(1) From 1998 to 2000, the maximum spring and fall burn acres shall be the following number of acres planted prior to September 1 of each year:

Year	Maximum Fall Burn Acres	Maximum Spring Burn Acres
1998	90,000	110,000
1999	90,000	110,000
2000	90,000	110,000

(2) Notwithstanding paragraph (1), any of the 90,000 acres allocated in the fall that are not burned may be added to the maximum spring burn acres, provided that the maximum spring burn acres does not exceed 160,000 acres.

(3) Notwithstanding paragraph (1), the maximum acres burned between January 1, 1998, and August 31, 1998, shall be limited so that the total acres burned between September 1, 1997, and August 31, 1998, do not exceed 38 percent of the total acres planted prior to September 1, 1997.

(4) In 2001 and thereafter, the maximum annual burn acres shall be the number of acres prescribed in subdivision (i), subject to subdivisions (f) and (h).

(d) The number of allowable acres to be burned each day shall be determined by the state board and the air pollution control officers in the Sacramento Valley Air Basin and equitably allocated among rice growers in accordance with the annual agricultural burning plan adopted by the air pollution control council and approved by the state board.

(e) On or before September 1, 2000, the state board, in consultation with the department and the air pollution control council, shall adopt regulations consistent with the criteria provided in subdivisions (f) and (h). On or before September 1, 1996, an advisory group shall be established by the state board and the department to assist in the adoption of those regulations.

(f) Commencing September 1, 2001, the county air pollution control officers in the Sacramento Valley Air Basin may grant conditional rice straw burning permits once the county agricultural commissioner has determined that the applicant has met the conditions specified in subdivision (h). The county agricultural commissioner shall be responsible for all field inspections associated with the issuance of conditional rice straw burning permits. A

conditional rice straw burning permit shall be valid for only one burn, per field, per year.

(g) The county agricultural commissioner may charge the applicant a fee not to exceed the costs incurred by the county agricultural commissioner in making the determination specified in subdivision (f). This subdivision shall be operative only until January 1, 2009.

(h) If the terms and conditions for issuing conditional rice straw burning permits specified in paragraphs (1) to (4), inclusive, are met, a conditional rice straw burning permit may be issued unless the state board and the department have jointly determined, based upon an annual review process, that there are other economically and technically feasible alternative means of eliminating the disease that are not substantially more costly to the applicant. The terms and conditions for issuing the conditional rice straw burning permits are:

(1) The fields to be burned are specifically described.

(2) The applicant has not violated any provision of this section within the previous three years.

(3) During the growing season, the county agricultural commissioner has independently determined the significant presence of a pathogen in an amount sufficient to constitute a rice disease such as stem rot.

(4) The county agricultural commissioner makes a finding that the existence of the pathogen as identified in paragraph (3) will likely cause a significant, quantifiable reduction in yield in the field to be burned during the current or next growing season. The findings of the county agricultural commissioner shall be based on recommendations adopted by the advisory group established pursuant to subdivision (e).

(i) (1) The maximum annual number of acres burned in the Sacramento Valley Air Basin pursuant to paragraph (3) of subdivision (c) shall be the lesser of:

(A) The total of 25 percent of each individual applicant's planted acres that year.

(B) A total of 125,000 acres planted in the Sacramento Valley Air Basin.

(2) Each grower shall be eligible to burn up to 25 percent of the grower's planted acres, as determined by the air pollution control officers in the Sacramento Valley Air Basin and subject to the maximum annual number of acres burned set forth in paragraph (1), if the grower has met the criteria for a conditional rice straw burning permit.

(3) The air pollution control council shall annually determine which is the lesser of subparagraphs (A) and (B) of paragraph (1), and shall determine the maximum percentage applicable to all growers subject to the conditions set forth in subdivisions (f) and (h).

(4) A grower who owns or operates 400 acres or less who has met the criteria for the issuance of a conditional rice straw burning permit

may burn his or her entire acreage once every four years, provided that the limit prescribed in paragraph (1) is not exceeded.

(5) Nothing in this subdivision shall permit an applicant to transfer, sell, or trade any permission to burn granted pursuant to this subdivision to another applicant or individual.

(j) The state board and the department shall jointly determine if the allowable acres to be burned, as provided in subdivisions (c), (f), and (h), may be exceeded due to extraordinary circumstances, such as an act of God, that have an impact over a continuing duration and make alternatives other than burning unusable.

(k) "Administrative burning" means burning of vegetative materials along roads, in ditches, and on levees adjacent to or within a rice field, or the burning of vegetative materials on rice research facilities authorized by the county agricultural commissioner, not to exceed 2,000 acres. Administrative burning conducted in accordance with Section 41852 is not subject to this section.

(*l*) (1) On or before September 1, 1992, the state board and the department shall jointly establish an advisory committee composed of 10 members to assist with the identification and implementation of alternatives to rice straw burning. Members of the committee shall be from the Sacramento Valley Air Basin, and the committee shall consist of two rice growers, two representatives from the environmental community, two health officials, two county supervisors or their designees, one member from the air pollution control council, and one member from the business community with expertise in market or product development. The committee shall meet at least annually. General Fund moneys shall not be used to support the committee.

(2) The committee shall develop a list of priority goals for the development of alternative uses of rice straw for the purpose of developing feasible and cost-effective alternatives to rice straw burning. These goals shall include, but not be limited to, research on alternatives, economic incentives to encourage alternative uses, and new product development.

(m) On or before September 1, 1998, the state board, in consultation with the department, the advisory committee, and the Department of Commerce, shall develop an implementation plan and a schedule to achieve diversion of not less than 50 percent of rice straw produced toward off-field uses by 2000. Off-field uses may include, but are not limited to, the production of energy and fuels, construction materials, pulp and paper, and livestock feed.

(n) On or before September 1, 1999, the state board and the department shall jointly report to the Legislature on the progress of the phasedown of, and the identification and implementation of alternatives to, rice straw burning. This report shall include an economic and environmental assessment, the status of feasible and cost-effective alternatives to rice straw burning, recommendations from the advisory committee on the development of alternatives to

rice straw burning, the status of the implementation plan and the schedule required by subdivision (m), progress toward achieving the 50 percent diversion goal, any recommended changes to this section, and other issues related to this section. The report shall be updated biennially and transmitted to the Legislature not later than September 1 of each odd-numbered year. The state board may adjust the district burn permit fees specified in subdivision (s) to pay for the preparation of the report and its updates. The districts shall collect and remit the adjustment to the state board, which shall deposit the fees in the Motor Vehicle Account in the State Transportation Fund. It shall be the goal of the state board and the department that the cost of the report and its updates shall not exceed fifty thousand dollars ($50,000).

(o) The state board and the California Department of Food and Agriculture shall jointly collect and analyze all available data relevant to the air quality and public health impacts and, to the extent feasible, the economic impacts, that may be associated with the burning of rice straw pursuant to the schedule provided in subparagraph (1) of subdivision (c). On or before July 1, 2001, the state board shall submit a report to the Legislature presenting its findings regarding the air quality, public health, and economic impacts associated with the burning of rice straw pursuant to the schedule provided in paragraph (1) of subdivision (c).

(p) The Legislature hereby finds and declares as follows:

(1) Because of the requirements imposed by this section, rice straw that was previously burned may present, as solid waste, a new disposal problem.

(2) The state should assist local governments and growers in diverting rice straw from landfills by researching and developing diversion options.

(q) It is the intent of the Legislature that all feasible alternatives to rice straw burning and options for diverting rice straw from landfills be encouraged.

(r) This subdivision confirms that reductions in emissions from rice straw burning qualify for air quality offsets, in accordance with paragraphs (1) and (2).

(1) These credits shall meet the requirements specified in state law and district rules and regulations, and shall comply with applicable district banking rules established pursuant to Sections 40709 to 40713, inclusive. Districts are urged to establish banking systems in accordance with Sections 40709 to 40713, inclusive. The state board may adopt regulations to implement this subdivision, including, but not limited to, consideration of the seasonal and intermittent nature of rice straw burning emissions. In developing the regulations, the state board shall consult with all concerned parties. However, emission reduction credits that would otherwise accrue from reductions in emissions from rice straw burning shall not

be affected or negated by the phasedown of burning, as specified in subdivision (c).

(2) Reductions in emissions achieved in compliance with subdivision (c) that are banked or used as credits shall not be credited for purposes of attainment planning and progress towards the attainment of any state or national ambient air quality standard as required by state and federal law.

(s) (1) Any person who negligently or intentionally violates any provision of this article is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars ($10,000), imprisonment in the county jail for not more than nine months, or by both that fine and imprisonment. This subdivision applies only to agricultural burning in the Sacramento Valley Air Basin.

(2) Any person who negligently or intentionally violates any provision in this article is liable for a civil penalty of not more than ten thousand dollars ($10,000). This subdivision applies only to agricultural burning in the Sacramento Valley Air Basin.

(t) Districts in the Sacramento Valley Air Basin shall impose fees on growers to cover the cost of implementing this section pursuant to Section 42311.

(u) To the extent that resources are available, the state board and the agencies with jurisdiction over air quality within the Sacramento Valley Air Basin shall do both of the following:

(1) Improve responses to citizen complaints, and, to the extent feasible, immediately investigate and analyze smoke complaints from the public to identify factors that contribute to complaints and to develop better smoke control measures to be included in the agricultural burning plan, keep a record of all complaints, coordinate among other agencies on citizens' complaints, and investigate the source of the pollution causing the complaint.

(2) Respond more quickly to requests for update from county air pollution control officers to help maximize burning days when meteorological conditions are best suited for smoke dispersion.

SEC. 3. Section 44535 of the Health and Safety Code is amended to read:

44535. (a) The authority may separately approve financing for projects, the purpose of which is to prevent or reduce environmental pollution resulting from the disposal of solid or liquid waste.

(b) The following projects shall be considered for financing:

(1) Projects utilizing recognized resource recovery or energy conversion processes.

(2) Projects utilizing new technologies or processes for resource recovery or energy conversion.

(3) Projects utilizing technologies designed to reduce the level of pollutants found in water.

(4) Recycled water facilities.

(5) Water main replacements.

(6) Water filtration facilities.

(7) Projects for the disposal of agricultural wastes.

(8) Other projects for the reduction of environmental pollution resulting from the disposal of solid or liquid waste.

(c) The projects specified in subdivision (b) may include elements that provide for new refuse removal vehicles, transfer stations, resource recovery or energy conversion plants, source separation, or any solid or liquid waste disposal facilities involved in resource recovery systems. "Solid or liquid waste disposal facilities" means any property, or portion thereof, used for the collection, storage, treatment, utilization, processing, or final disposal of solid or liquid waste in resource recovery systems.

SEC. 4. Section 44537.5 of the Health and Safety Code is amended to read:

44537.5. The authority shall provide the maximum opportunity for the use of the authority's financing by individuals, businesses engaged in agricultural operations, and small businesses or corporations by providing information, assistance, and coordination to facilitate financing for small projects and other financing that benefits the environment, including financing for projects for the disposal of agricultural wastes, with special attention to the needs of businesses that do not meet standard commercial lending requirements but provide public benefits, such as job creation or retention.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that will be incurred by a local agency or school district 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.

Moreover, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain other costs that will be incurred 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 746

An act to amend Sections 651 and 668 of, and to add Section 655.7 to, the Harbors and Navigation Code, and to amend Section 11837.3 of the Health and Safety Code, relating to vessels.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 651 of the Harbors and Navigation Code is amended to read:

651. As used in this chapter, unless the context clearly requires a different meaning:

(a) "Alcohol" means any form or derivative of ethyl alcohol (ethanol).

(b) "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(c) "Associated equipment" means any of the following, excluding radio equipment:

(1) Any system, part, or component of a boat as originally manufactured or any similar part or component manufactured or sold for replacement, repair, or improvement of the system, part, or component.

(2) Any accessory or equipment for, or appurtenance to, a boat.

(3) Any marine safety article, accessory, or equipment intended for use by a person on board a boat.

(d) "Boat" means any vessel that is any of the following:

(1) Manufactured or used primarily for noncommercial use.

(2) Leased, rented, or chartered to another for the latter's noncommercial use.

(3) Engaged in the carrying of six or fewer passengers, including those for-hire vessels carrying more than three passengers while using inland waters of the state that are not declared navigable by the United States Coast Guard.

(4) Commercial vessels required to be numbered pursuant to Section 9850 of the Vehicle Code.

(e) "Chemical test" means a test that analyzes an individual's breath, blood, or urine, for evidence of drug or alcohol use.

(f) "Controlled substance" means controlled substance as defined in Section 11007 of the Health and Safety Code.

(g) "Department" means the Department of Boating and Waterways.

(h) "Director" means the Director of Boating and Waterways.

(i) "Drug" means any substance or combination of substances other than alcohol which could so affect the nervous system, brain, or muscles of a person as to impair to an appreciable degree his or her

ability to operate a vessel in the manner that an ordinarily prudent person, in full possession of his or her faculties, using reasonable care, would operate a similar vessel under like conditions.

(j) "Intoxicant" means any form of alcohol, drug, or combination thereof.

(k) "Legal owner" is a person holding the legal title to a vessel under a conditional sale contract, the mortgagee of a vessel, or the renter or lessor of a vessel to the state, or to any county, city, district, or political subdivision of the state, under a lease, lease-sale, or rental-purchase agreement which grants possession of the vessel to the lessee for a period of 30 consecutive days or more.

(*l*) "Manufacturer" means any person engaged in any of the following:

(1) The manufacture, construction, or assembly of boats or associated equipment.

(2) The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly.

(3) The importation into this state for sale of boats, associated equipment, or components thereof.

(m) "Marine employer" means the owner, managing operator, charterer, agent, master, or person in charge of a vessel other than a recreational vessel.

(n) "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion, but shall not include a vessel which has a valid marine document issued by the United States Coast Guard or any federal agency successor thereto.

(o) "Operator" means the person on board who is steering the vessel while underway.

(p) "Owner" is a person having all the incidents of ownership, including the legal title, of a vessel whether or not that person lends, rents, or pledges the vessel; the person entitled to the possession of a vessel as the purchaser under a conditional sale contract; or the mortgagor of a vessel. "Owner" does not include a person holding legal title to a vessel under a conditional sale contract, the mortgagee of a vessel, or the renter or lessor of a vessel to the state or to any county, city, district, or political subdivision of the state under a lease, lease-sale, or rental-purchase agreement which grants possession of the vessel to the lessee for a period of 30 consecutive days or more.

(q) "Passenger" means every person carried on board a vessel other than any of the following:

(1) The owner or his or her representative.

(2) The operator.

(3) Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services.

(4) Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his or her carriage.

(r) "Person" means an individual, partnership, firm, corporation, limited liability company, association, or other entity, but does not include the United States, the state, or a municipality or subdivision thereof.

(s) "Personal watercraft" means a vessel less than 12 feet in length, propelled by machinery, that is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

(t) "Recreational vessel" means a vessel that is being used only for pleasure.

(u) "Registered owner" is the person registered by the Department of Motor Vehicles as the owner of the vessel.

(v) "Special-use area" means all or a portion of a waterway that is set aside for specified uses or activities to the exclusion of other incompatible uses or activities.

(w) "State" means a state of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the District of Columbia.

(x) "State of principal use" means the state on which waters a vessel is used or intended to be used most during a calendar year.

(y) "Undocumented vessel" means any vessel that is not required to have, and does not have, a valid marine document issued by the United States Coast Guard or any federal agency successor thereto.

(z) "Use" means operate, navigate, or employ.

(aa) "Vessel" includes every description of watercraft used or capable of being used as a means of transportation on water, except either of the following:

(1) A seaplane on the water.

(2) A watercraft specifically designed to operate on a permanently fixed course, the movement of which is restricted to a fixed track or arm to which the watercraft is attached or by which the watercraft is controlled.

(bb) "Water skis, an aquaplane, or a similar device" includes all forms of water skiing, barefoot skiing, skiing on skim boards, knee boards, or other contrivances, parasailing, ski kiting, or any activity where a person is towed behind or alongside a boat.

(cc) "Waters of this state" means any waters within the territorial limits of this state.

SEC. 2. Section 655.7 is added to the Harbors and Navigation Code, to read:

655.7. (a) A person operating a personal watercraft equipped by the manufacturer with a lanyard-type engine cutoff switch shall attach the lanyard to his or her person, clothing, or personal flotation device, as appropriate for the specific vessel.

(b) No person shall operate a personal watercraft equipped by the manufacturer with a self-circling device if the self-circling device or engine throttle has been altered in any way that would impede or prevent the self-circling device from operating in its intended manner.

(c) Every personal watercraft shall, at all times, be operated in a reasonable and prudent manner. Maneuvers that unreasonably or unnecessarily endanger life, limb, or property, including, but not limited to, jumping or attempting to jump the wake of another vessel within 100 feet of that other vessel, operating the personal watercraft toward any person or vessel in the water and turning sharply at close range so as to spray the vessel or person, or operating at a rate of speed and proximity to another vessel so that either operator is required to swerve at the last minute to avoid collision, is unsafe or reckless operation of a vessel.

(d) No person shall operate a personal watercraft at any time between the hours from one-half hour after sunset to one-half hour before sunrise.

(e) This section does not apply to a performer who is engaged in a professional exhibition or to a person who is participating in a regatta, race, marine parade, tournament, exhibition, or other event sanctioned by the United States Coast Guard or authorized by a permit issued by the local entity having jurisdiction over the area where the event is held.

(f) Any violation of this section is an infraction.

SEC. 3. Section 668 of the Harbors and Navigation Code is amended to read:

668. (a) Any person who violates subdivision (c) of Section 652, Section 654, 654.05, 654.06, 655.7, 658.3, 659, 673, 674, or 754, or any rules or regulations adopted pursuant thereto, is guilty of an infraction, punishable by a fine of not more than two hundred fifty dollars ($250).

(b) (1) Any person who violates Section 655.2 or 655.3, or any regulation adopted pursuant thereto, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars ($100) or imprisonment in the county jail for not more than five days, or by both that fine and imprisonment, for each violation.

(2) Any person who violates subdivision (a) or (b) of Section 658 is guilty of a misdemeanor and shall be punished by a fine of not more than two hundred dollars ($200) for each violation.

(3) Any person who violates subdivision (d) of Section 652, Section 652.5, subdivision (a) of Section 655, Section 655.05, 656, or 656.1, subdivision (d) or (e) of Section 658, Section 663.6 or 665, or any rules and regulations adopted pursuant to subdivision (b) or (c) of Section 660, is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than six months, or by both that fine and imprisonment, for each violation.

(c) Any person convicted of a violation of Section 656.2 or 656.3 shall be punished by a fine not more than ten thousand dollars ($10,000) or imprisonment in the state prison or in the county jail for not more than one year, or by both that fine and imprisonment.

(d) Any person convicted of a violation of Section 658.5 shall be punished by a fine of not more than one hundred dollars ($100).

(e) Any person convicted of a first violation of subdivision (b), (c), (d), or (e) of Section 655, or of a violation of Section 655.4, shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than six months, or by both that fine and imprisonment. If probation is granted, the court, as a condition of probation, may require the person to participate in, and successfully complete, an alcohol or drug education, training, or treatment program, in addition to imposing any penalties required by this code. In order to enable all persons to participate in licensed programs, every person referred to a program licensed pursuant to Section 11836 of the Health and Safety Code shall pay that program's costs commensurate with that person's ability to pay as determined by Section 11837.4 of the Health and Safety Code.

(f) Any person convicted of a second or subsequent violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of the first conviction of any of those subdivisions or subdivision (f) of Section 655, or any person convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of a separate conviction of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a vessel, or a separate conviction of Section 23152 or 23153 of the Vehicle Code or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. If probation is granted, the court, as a condition of probation, may require the person to do either of the following, if available in the county of the person's residence or employment:

(1) Participate, for at least 18 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, as designated by the court. 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.

(2) 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. A

person ordered to treatment pursuant to this paragraph 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. 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 paragraph is a basis for reducing any other probation requirement.

(g) Any person convicted of a violation of subdivision (f) of Section 655 shall be punished by imprisonment in the state prison, or in the county jail for not less than 90 days or more than one year, and by a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000). If probation is granted, the court, as a condition of probation, may require the person to participate in, and successfully complete, 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 person's county of residence or employment, as designated by the court. 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.

(h) (1) If any person is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (b), (c), (d), or (e) of Section 655 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for not less than five days or more than one year and pay a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000).

(2) If any person is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (f) of Section 655, of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for not less than 90 days or more than one year, and pay a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000), and the court, as a condition of probation, may order that the person participate 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. 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.

(i) The court shall not absolve a person who is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (b), (c), (d), (e), or (f) of Section 655, of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, from the minimum time in confinement provided in this section and a fine of at least two hundred fifty dollars ($250), except as provided in subdivision (h).

(j) Except in unusual cases where the interests of justice demand an exception, the court shall not strike a separate conviction of an offense under subdivision (b), (c), (d), (e), or (f) of Section 655 or of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, for purposes of sentencing in order to avoid imposing, as part of the sentence or as a term of probation, the minimum time in confinement and the minimum fine, as provided in this section. When a separate conviction is stricken by the court for purposes of sentencing, the court shall specify the reason or reasons for the striking order. On appeal by the people from an order striking a separate conviction, it shall be conclusively presumed that the order was made only for the reasons specified in the order, and the order shall be reversed if there is no substantial basis in the record for any of those reasons.

SEC. 3.2. Section 668 of the Harbors and Navigation Code is amended to read:

668. (a) Any person who violates subdivision (c) of Section 652, Section 654, 654.05, 654.06, 655.7, 658.3, 659, 673, 674, or 754, or any rules or regulations adopted pursuant thereto, is guilty of an infraction, punishable by a fine of not more than two hundred fifty dollars ($250).

(b) (1) Any person who violates Section 655.2 or 655.3, or any regulation adopted pursuant thereto, is guilty of a misdemeanor, punishable by a fine of not more than one hundred dollars ($100) or imprisonment in a county jail for not more than five days, or by both that fine and imprisonment, for each violation.

(2) Any person who violates subdivision (a) or (b) of Section 658 is guilty of a misdemeanor, punishable by a fine of not more than two hundred dollars ($200) for each violation.

(3) Any person who violates subdivision (d) of Section 652, Section 652.5, subdivision (a) of Section 655, Section 655.05, 656, or 656.1, subdivision (d) or (e) of Section 658, Section 663.6 or 665, or any rules and regulations adopted pursuant to subdivision (b) or (c) of Section 660, is guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars ($1,000) or imprisonment in a county jail for not more than six months, or by both that fine and imprisonment, for each violation.

(c) Any person convicted of a violation of Section 656.2 or 656.3 shall be punished by a fine of not more than ten thousand dollars ($10,000) or imprisonment in the state prison or in a county jail for not more than one year, or by both that fine and imprisonment.

(d) Any person convicted of a violation of Section 658.5 or 658.6 shall be punished by a fine of not more than one hundred dollars ($100).

(e) Any person convicted of a first violation of subdivision (b), (c), (d), or (e) of Section 655, or of a violation of Section 655.4, shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in a county jail for not more than six months, or by both that fine and imprisonment. If probation is granted, the court, as a condition of probation, may require the person to participate in, and successfully complete, an alcohol or drug education, training, or treatment program, in addition to imposing any penalties required by this code. In order to enable all persons to participate in licensed programs, every person referred to a program licensed pursuant to Section 11836 of the Health and Safety Code shall pay that program's costs commensurate with that person's ability to pay as determined by Section 11837.4 of the Health and Safety Code.

(f) Any person convicted of a second or subsequent violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of the first conviction of any of those subdivisions or subdivision (f) of Section 655, or any person convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of a separate conviction of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a vessel, or a separate conviction of Section 23152 or 23153 of the Vehicle Code or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. If probation is granted, the court, as a condition of probation, may require the person to do either of the following, if available in the county of the person's residence or employment:

(1) Participate, for at least 18 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, as designated by the court. 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.

(2) 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. A person ordered to treatment pursuant to this paragraph 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. 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 paragraph is a basis for reducing any other probation requirement.

(g) Any person convicted of a violation of subdivision (f) of Section 655 shall be punished by imprisonment in the state prison or in a county jail for not less than 90 days or more than one year, and by a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000). If probation is granted, the court, as a condition of probation, may require the person to participate in, and successfully complete, 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 person's county of residence or employment, as designated by the court. 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.

(h) (1) If any person is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (b), (c), (d), or (e) of Section 655 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for not less than five days or more than one year and pay a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000).

(2) If any person is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation

of subdivision (f) of Section 655, of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, and is granted probation, the court shall impose as a condition of probation that the person be confined in a county jail for not less than 90 days or more than one year, and pay a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000), and the court, as a condition of probation, may order that the person participate 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. 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.

(i) The court shall not absolve a person who is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (b), (c), (d), (e), or (f) of Section 655, of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, from the minimum time in confinement provided in this section and a fine of at least two hundred fifty dollars ($250), except as provided in subdivision (h).

(j) Except in unusual cases where the interests of justice demand an exception, the court shall not strike a separate conviction of an offense under subdivision (b), (c), (d), (e), or (f) of Section 655 or of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, for purposes of sentencing in order to avoid imposing, as part of the sentence or as a term of probation, the minimum time in confinement and the minimum fine, as provided in this section. When a separate conviction is stricken by the court for purposes of sentencing, the court shall specify the reason or reasons for the striking order. On appeal by the people from an order striking a separate conviction, it shall be conclusively presumed that the order was made only for the reasons specified in the order, and the order shall be reversed if there is no substantial basis in the record for any of those reasons.

SEC. 3.4. Section 668 of the Harbors and Navigation Code is amended to read:

668. (a) Any person who violates subdivision (c) of Section 652, Section 654, 654.05, 654.06, 655.7, 658.3, 659, 673, 674, or 754, or any regulations adopted pursuant thereto, or any regulation adopted pursuant to Section 655.3 relating to vessel equipment requirements, is guilty of an infraction, punishable by a fine of not more than two hundred fifty dollars ($250).

(b) (1) Any person who violates Section 655.2 or any regulation adopted pursuant thereto, or, except as provided in subdivision (a), any regulation adopted pursuant to Section 655.3, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars ($100) or imprisonment in the county jail for not more than five days, or by both that fine and imprisonment, for each violation.

(2) Any person who violates subdivision (a) or (b) of Section 658 is guilty of a misdemeanor and shall be punished by a fine of not more than two hundred dollars ($200) for each violation.

(3) Any person who violates subdivision (d) of Section 652, Section 652.5, subdivision (a) of Section 655, Section 655.05, 656, or 656.1, subdivision (d) or (e) of Section 658, Section 663.6 or 665, or any rules and regulations adopted pursuant to subdivision (b) or (c) of Section 660, is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than six months, or by both that fine and imprisonment, for each violation.

(c) Any person convicted of a violation of Section 656.2 or 656.3 shall be punished by a fine of not more than ten thousand dollars ($10,000) or imprisonment in the state prison or in the county jail for not more than one year, or by both that fine and imprisonment.

(d) Any person convicted of a violation of Section 658.5 shall be punished by a fine of not more than one hundred dollars ($100).

(e) Any person convicted of a first violation of subdivision (b), (c), (d), or (e) of Section 655, or of a violation of Section 655.4, shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than six months, or by both that fine and imprisonment. If probation is granted, the court, as a condition of probation, may require the person to participate in, and successfully complete, an alcohol or drug education, training, or treatment program, in addition to imposing any penalties required by this code. In order to enable all persons to participate in licensed programs, every person referred to a program licensed pursuant to Section 11836 of the Health and Safety Code shall pay that program's costs commensurate with that person's ability to pay as determined by Section 11837.4 of the Health and Safety Code.

(f) Any person convicted of a second or subsequent violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of the first conviction of any of those subdivisions or subdivision (f) of

Section 655, or any person convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of a separate conviction of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a vessel, or a separate conviction of Section 23152 or 23153 of the Vehicle Code or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. If probation is granted, the court, as a condition of probation, may require the person to do either of the following, if available in the county of the person's residence or employment:

(1) Participate, for at least 18 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, as designated by the court. 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.

(2) 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. A person ordered to treatment pursuant to this paragraph 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. 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 paragraph is a basis for reducing any other probation requirement.

(g) Any person convicted of a violation of subdivision (f) of Section 655 shall be punished by imprisonment in the state prison, or in the county jail for not less than 90 days or more than one year, and by a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000). If probation is granted, the court, as a condition of probation, may require the person to participate in, and successfully complete, 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 person's county of residence or employment, as designated by the court. 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.

(h) (1) If any person is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (b), (c), (d), or (e) of Section 655 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for not less than five days or more than one year and pay a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000).

(2) If any person is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (f) of Section 655, of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for not less than 90 days or more than one year, and pay a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000), and the court, as a condition of probation, may order that the person participate 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. 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.

(i) The court shall not absolve a person who is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (b), (c), (d), (e), or (f) of Section 655, of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, from the minimum time in confinement provided in this section and a fine of at least two hundred fifty dollars ($250), except as provided in subdivision (h).

(j) Except in unusual cases where the interests of justice demand an exception, the court shall not strike a separate conviction of an offense under subdivision (b), (c), (d), (e), or (f) of Section 655 or of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, or

Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, for purposes of sentencing in order to avoid imposing, as part of the sentence or as a term of probation, the minimum time in confinement and the minimum fine, as provided in this section. When a separate conviction is stricken by the court for purposes of sentencing, the court shall specify the reason or reasons for the striking order. On appeal by the people from an order striking a separate conviction, it shall be conclusively presumed that the order was made only for the reasons specified in the order, and the order shall be reversed if there is no substantial basis in the record for any of those reasons.

SEC. 3.6. Section 668 of the Harbors and Navigation Code is amended to read:

668. (a) Any person who violates subdivision (c) of Section 652, Section 654, 654.05, 654.06, 655.7, 658.3, 659, 673, 674, or 754, or any regulations adopted pursuant thereto, or any regulation adopted pursuant to Section 655.3 relating to vessel equipment requirements, is guilty of an infraction, punishable by a fine of not more than two hundred fifty dollars ($250).

(b) (1) Any person who violates Section 655.2 or any regulation adopted pursuant thereto, or, except as provided in subdivision (a), any regulation adopted pursuant to Section 655.3, is guilty of a misdemeanor, punishable by a fine of not more than one hundred dollars ($100) or imprisonment in the county jail for not more than five days, or by both that fine and imprisonment, for each violation.

(2) Any person who violates subdivision (a) or (b) of Section 658 is guilty of a misdemeanor, punishable by a fine of not more than two hundred dollars ($200) for each violation.

(3) Any person who violates subdivision (d) of Section 652, Section 652.5, subdivision (a) of Section 655, Section 655.05, 656, or 656.1, subdivision (d) or (e) of Section 658, Section 663.6 or 665, or any rules and regulations adopted pursuant to subdivision (b) or (c) of Section 660, is guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars ($1,000) or imprisonment in a county jail for not more than six months, or by both that fine and imprisonment, for each violation.

(c) Any person convicted of a violation of Section 656.2 or 656.3 shall be punished by a fine of not more than ten thousand dollars ($10,000) or imprisonment in the state prison or in a county jail for not more than one year, or by both that fine and imprisonment.

(d) Any person convicted of a violation of Section 658.5 or 658.6 shall be punished by a fine of not more than one hundred dollars ($100).

(e) Any person convicted of a first violation of subdivision (b), (c), (d), or (e) of Section 655, or of a violation of Section 655.4, shall be punished by a fine of not more than one thousand dollars ($1,000) or

imprisonment in a county jail for not more than six months, or by both that fine and imprisonment. If probation is granted, the court, as a condition of probation, may require the person to participate in, and successfully complete, an alcohol or drug education, training, or treatment program, in addition to imposing any penalties required by this code. In order to enable all persons to participate in licensed programs, every person referred to a program licensed pursuant to Section 11836 of the Health and Safety Code shall pay that program's costs commensurate with that person's ability to pay as determined by Section 11837.4 of the Health and Safety Code.

(f) Any person convicted of a second or subsequent violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of the first conviction of any of those subdivisions or subdivision (f) of Section 655, or any person convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of a separate conviction of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a vessel, or a separate conviction of Section 23152 or 23153 of the Vehicle Code or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. If probation is granted, the court, as a condition of probation, may require the person to do either of the following, if available in the county of the person's residence or employment:

(1) Participate, for at least 18 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, as designated by the court. 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.

(2) 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. A person ordered to treatment pursuant to this paragraph 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. 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 paragraph is a basis for reducing any other probation requirement.

(g) Any person convicted of a violation of subdivision (f) of Section 655 shall be punished by imprisonment in the state prison or in a county jail for not less than 90 days or more than one year, and by a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000). If probation is granted, the court, as a condition of probation, may require the person to participate in, and successfully complete, 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 person's county of residence or employment, as designated by the court. 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.

(h) (1) If any person is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (b), (c), (d), or (e) of Section 655 and is granted probation, the court shall impose as a condition of probation that the person be confined in a county jail for not less than five days or more than one year and pay a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000).

(2) If any person is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (f) of Section 655, of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, and is granted probation, the court shall impose as a condition of probation that the person be confined in a county jail for not less than 90 days or more than one year, and pay a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000), and the court, as a condition of probation, may order that the person participate 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. 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.

(i) The court shall not absolve a person who is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (b), (c), (d), (e), or (f) of Section 655, of Section 191.5 or subdivision (c) of Section 192.5

of the Penal Code, when the separate conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, from the minimum time in confinement provided in this section and a fine of at least two hundred fifty dollars ($250), except as provided in subdivision (h).

(j) Except in unusual cases where the interests of justice demand an exception, the court shall not strike a separate conviction of an offense under subdivision (b), (c), (d), (e), or (f) of Section 655 or of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, for purposes of sentencing in order to avoid imposing, as part of the sentence or as a term of probation, the minimum time in confinement and the minimum fine, as provided in this section. When a separate conviction is stricken by the court for purposes of sentencing, the court shall specify the reason or reasons for the striking order. On appeal by the people from an order striking a separate conviction, it shall be conclusively presumed that the order was made only for the reasons specified in the order, and the order shall be reversed if there is no substantial basis in the record for any of those reasons.

SEC. 4. Section 11837.3 of the Health and Safety Code is amended to read:

11837.3. (a) (1) Each county, through the county alcohol program administrator, shall determine its ability to establish, through public or private resources, a program of alcohol and other drug education and counseling services for a person whose license to drive has been administratively suspended or revoked for, or who is convicted of, a first violation of Section 23152 or 23153 of the Vehicle Code, or who is convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 of, or Section 655.4 of, the Harbors and Navigation Code, pursuant to subdivisions (e) and (f) of Section 668 of the Harbors and Navigation Code. The program shall be self-supporting through fees collected from program participants. The program shall be of at least three months' duration and totaling at least 30 hours of direct education and counseling services, that shall be authorized by each county and licensed by, and operated under general regulations established by, the department. A county that shows the department that it has insufficient resources, insufficient potential program participants, or other material disadvantages is not required to establish a program.

(2) The department may license an alcohol and other drug education program that is less than 30 hours in length in any county where the board of supervisors has provided the showing pursuant

to paragraph (1), and the department has upheld that showing. The shorter program is subject to all other applicable regulations developed by the department pursuant to paragraph (3) of subdivision (b) of Section 11837.4.

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

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

(d) (1) Any person required to successfully complete an alcohol and other drug education and counseling program as a condition of probation shall enroll in the program and, except when enrollment is required in a program that is required to report failures to enroll to the court, shall furnish proof of the enrollment to the court within the period of time and in the manner specified by the court. The person also shall participate in and successfully complete the program, and shall furnish proof of successful completion within the period of time and in the manner specified by the court.

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

SEC. 4.5. Section 11837.3 of the Health and Safety Code is amended to read:

11837.3. (a) (1) Each county, through the county alcohol program administrator, shall determine its ability to establish, through public or private resources, a program of alcohol and other drug education and counseling services for a person whose license to drive has been administratively suspended or revoked for, or who is convicted of, a first violation of Section 23152 or 23153 of the Vehicle Code, or who is convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 of, or Section 655.4 of, the Harbors and Navigation Code, pursuant to subdivisions (e) and (f) of Section 668 of the Harbors and Navigation Code. The program shall be self-supporting through fees collected from program participants. A six-month program that is imposed by a court on a person as a result of a first violation of Section 23152 or 23153 of the Vehicle Code shall include 45 hours of direct education and counseling services. A nine-month program that is imposed by a court on a person as a result of a first violation of Section 23152 or 23153 of the Vehicle Code shall include at least 60 hours of direct education and counseling services. Programs established pursuant to this subdivision shall be authorized

by each county and licensed by, and operated under general regulations established by, the department. A county that shows the department that it has insufficient resources, insufficient potential program participants, or other material disadvantages is not required to establish a program.

(2) The department may license an alcohol and other drug education program that is less than 45 or 60 hours in length in any county where the board of supervisors has provided the showing pursuant to paragraph (1), and the department has upheld that showing. The shorter program is subject to all other applicable regulations developed by the department pursuant to paragraph (3) of subdivision (b) of Section 11837.4.

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

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

(d) (1) Any person required to successfully complete an alcohol and other drug education and counseling program as a condition of probation shall enroll in the program and, except when enrollment is required in a program that is required to report failures to enroll to the court, shall furnish proof of the enrollment to the court within the period of time and in the manner specified by the court. The person also shall participate in and successfully complete the program, and shall furnish proof of successful completion within the period of time and in the manner specified by the court.

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

SEC. 5. Section 3.2 of this bill incorporates amendments to Section 668 of the Harbors and Navigation Code proposed by both this bill and SB 545. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1998, (2) each bill amends Section 668 of the Harbors and Navigation Code, (3) SB 810 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 545, in which case Sections 3, 3.4, and 3.6 of this bill shall not become operative.

SEC. 6. Section 3.4 of this bill incorporates amendments to Section 668 of the Harbors and Navigation Code proposed by both this bill and SB 810. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1998, (2) each bill

amends Section 668 of the Harbors and Navigation Code, (3) SB 545 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 810, in which case Sections 3, 3.2, and 3.6 of this bill shall not become operative.

SEC. 7. Section 3.6 of this bill incorporates amendments to Section 668 of the Harbors and Navigation Code proposed by this bill, SB 545, and SB 810. It shall only become operative if (1) all three bills are enacted and become effective on January 1, 1998, (2) each bill amends Section 668 of the Harbors and Navigation Code, and (3) this bill is enacted after SB 545 and SB 810, in which case Sections 3, 3.2, and 3.4 of this bill shall not become operative.

SEC. 8. Section 4.5 of this bill incorporates amendments to Section 11837.3 of the Health and Safety Code proposed by both this bill and AB 762. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1998, (2) each bill amends Section 11837.3 of the Health and Safety Code, and (3) this bill is enacted after AB 762, in which case Section 4 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.

CHAPTER 747

An act to amend Section 668.1 of, to add Section 658.6 to, and to repeal and add Section 658.5 of, the Harbors and Navigation Code, relating to vessels.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 658.5 of the Harbors and Navigation Code is repealed.

SEC. 2. Section 658.5 is added to the Harbors and Navigation Code, to read:

658.5. (a) Except as provided in subdivision (b), no person under 16 years of age shall operate a vessel powered by a motor of greater than 15 horsepower, except for a vessel that does not exceed 30 feet in length and is designed to use wind as its principal source of propulsion, or a dinghy used directly between a moored vessel and the shoreline or between a moored vessel and another moored vessel.

(b) Except as provided in subdivision (a), no person 12, 13, 14, or 15 years of age shall operate a vessel powered by a motor of greater than 15 horsepower, or a vessel that exceeds 30 feet in length and is designed to use wind as its principal source of propulsion, unless the person is accompanied in the vessel by a person who is at least 18 years of age and who is attentive and supervising the operation of the vessel.

(c) Subdivisions (a) and (b) do not apply to any of the following:

(1) A person who operates a vessel as a performer in a professional exhibition.

(2) A person engaged in an organized regatta, vessel race, or water ski race.

(3) A person engaged in a marine event authorized pursuant to Section 268.

(d) Any person who violates this section, and any person who permits any other person under 16 years of age to operate a vessel in violation of this section, is guilty of an infraction.

SEC. 3. Section 658.6 is added to the Harbors and Navigation Code, to read:

658.6. (a) The department, by October 1, 1998, shall report to the Legislature on its recommendations for enhancement and expansion of boating safety and education. The recommendations shall consider the findings and data in the department's annual California Boating Accident Report and shall focus on strategies to improve vessel-operator knowledge and boating safety. The department's study shall include, but not be limited to, an examination of both voluntary and mandatory education.

(b) In preparing the report required by subdivision (a), the director, by February 1, 1998, shall appoint a Boating Safety Advisory Committee which shall include, but not be limited to, representatives of the Boating and Waterways Commission; boating law enforcement agencies; the United States Power Squadron; the United States Coast Guard Auxiliary; entities that provide boating education courses; personal watercraft organizations; boat dealers and yacht brokers; boating, sailing, and yachting organizations; owners and operators of public and private marina facilities; boat rental operators; lifeguards and harbormasters; and boating accident victims. The committee shall meet and present recommendations to the department by July 1, 1998. The members of the committee shall serve without compensation and shall not be reimbursed by the state for expenses. The department shall assist the committee in carrying out its duties.

SEC. 4. Section 668.1 of the Harbors and Navigation Code is amended to read:

668.1. (a) Any person convicted of a violation of subdivision (b), (c), (d), (e), or (f) of Section 655 pertaining to a mechanically propelled vessel but not to manipulating any water skis, an aquaplane, or similar device, when the conviction resulted from the operation of a vessel, shall be ordered by the court to complete and pass a boating safety course approved by the department.

(b) Any person convicted of a violation of subdivision (a) of Section 655 or of Section 655.2, 655.6, 658, or 658.5 of this code, or Section 191.5 of the Penal Code, when the conviction resulted from the unlawful operation of a vessel, may be ordered by the court to complete and pass a boating safety course approved by the department.

(c) Any person convicted of a violation of Section 655.2, 655.6, 658, or 658.5 of this code, or Section 191.5 of the Penal Code, when the conviction resulted from the operation of a vessel within seven years of a previous conviction of any of those violations, shall be ordered by the court to complete and pass a boating safety course approved by the department.

(d) Any person who has been ordered by the court to complete and pass a boating safety course pursuant to this section shall submit to the court proof of completion and passage of the course within seven months of the time of his or her conviction. The proof shall be in a form that has been approved by the department and that provides for the ability to submit the form to the court through the United States Postal Service. If the person who has been required to complete and pass a boating safety course is under 18 years of age, the court may require that the person obtain parental consent to enroll in the course. If the person does not complete and pass the boating safety course, the court may extend the period for completion or impose another penalty as prescribed by statute.

(e) The department shall adopt regulations to carry out this section, including approval of boating safety education courses, prescribing the forms for proof of completion and passage, and setting forth any fees to be charged to course participants, which fees shall not exceed the expenses associated with providing the course.

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 748

An act to amend Sections 11735, 11736, and 11751.8 of, and to add Section 11751.9 to, the Insurance Code, relating to workers' compensation.

[Approved by Governor October 5, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 11735 of the Insurance Code is amended to read:

11735. (a) Every insurer shall file with the commissioner all rates, rating plans, and supplementary rate information that are to be used in this state. The rates and supplementary information shall be filed not later than 30 days prior to the effective date. If the commissioner finds, after a hearing, that an insurer's rates require closer supervision because of the insurer's financial condition, as determined pursuant to Section 11733, the insurer shall file with the commissioner at least 30 days before the effective date, all of those rates and the supplementary rate information and supporting information as prescribed by the commissioner. Upon application by the filer, the commissioner may authorize an earlier effective date.

(b) Rates filed pursuant to this section shall be filed in the form and manner prescribed by the commissioner. All rates, supplementary information and any supporting information for rates filed under this article shall, as soon as filed, be open to public inspection at any reasonable time. Copies may be obtained by any person on request and upon payment of a reasonable charge.

(c) Upon the written application of the insurer and insured, stating its reasons therefor, filed with the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

(d) Notwithstanding Section 679.70, no rating organization may issue nor may any insurer use any classification system or rate, as applied or used, that violates Section 679.71 or 679.72 or that violates the Unruh Civil Rights Act.

(e) Notwithstanding Sections 11657 to 11660, inclusive, a rating plan or supplementary rate information filed with the commissioner for purposes of offering deductibles to policyholders for all or part of benefits payable under the policy shall be deemed complete if the filing contains the following:

(1) A copy of the deductible endorsement that is to be attached to the policy to effectuate deductible coverage.

(2) Endorsement language that protects the rights of injured workers and ensures that benefits are paid by the insurer without regard to any deductible. The endorsement shall specify that the nonpayment of deductible amounts by the policyholder shall not relieve the insurer from payment of compensation for injuries sustained by the employee during the period of time the endorsed policy was in effect. The endorsement shall provide that deductible policies for workers' compensation insurance coverage shall not be terminated retroactively for nonpayment of deductible amounts.

(3) The endorsement shall provide that notwithstanding the deductible, the insurer shall pay all the obligations of the employer for workers' compensation benefits for injuries occurring during the policy period. Payment by the insurer of any amounts within the deductible shall be treated as an advancement of funds by the insurer to the employer and shall create a legal obligation for reimbursements, and may be secured by appropriate security.

(4) The endorsement shall specify whether loss adjustment expenses are to be treated as advancements within the deductible to be reimbursed by the employer.

(5) An explanation of premium reductions reflecting the type and level of the deductible will be clearly set forth for the policyholder.

(6) The filing shall provide that premium reductions for deductibles are determined before application of any experience modification, premium surcharge, or premium discount, and the premium reductions reflect the type and level of deductible consistent with accepted actuarial standards.

(7) The filing shall provide that nonpayment of deductible amounts by the insured employer to its insurer, or failure to comply with any security-related terms of the policy, shall be treated under the policy in the same manner as payment or nonpayment of premium pursuant to paragraph (1) of subdivision (b) of Section 676.8.

(f) The insurer shall report and record losses subject to the deductible as losses for purposes of ratemaking and application of an experience rating plan on the same basis as losses under policies providing first dollar coverage.

SEC. 2. Section 11736 of the Insurance Code is amended to read:

11736. An experience rating plan shall contain reasonable eligibility standards, provide adequate incentives for loss prevention, and shall provide for sufficient premium differentials so as to encourage safety.

SEC. 3. Section 11751.8 of the Insurance Code is amended to read:

11751.8. An insurer shall report to its rating organization as corrections or revisions of losses, pursuant to the unit statistical plan and uniform experience rating plans approved by the commissioner, if any of the following is applicable:

(a) A loss record detail was incorrectly reported through mistake other than error of judgment.

(b) One or more claims are declared noncompensable. A claim is declared noncompensable if any of the following applies:

(1) There is an official ruling specifically holding that a claimant is not entitled to benefits under the workers' compensation laws of the state, even though the claimant may have been awarded reimbursement for expenses incurred by the claimant in presenting the case.

(2) No claim was filed during the period of limitation provided by the workers' compensation laws for the filing of the claim, and the carrier, therefore, closes the claim.

(3) Where the carrier contends, prior to the valuation date, that a claimant is not entitled to benefits under the workers' compensation laws and the claim is officially closed because of the claimant's failure to prosecute the claim.

(c) The carrier has recovered in an action against a third party.

(d) A death claim has been compromised over the sole issue of the applicability of the workers' compensation laws of the state.

(e) The exposure has been reassigned to another classification through the revision of an audit, in which case the insurer shall file with the revision of exposure a revision of losses that will reassign all claims to the appropriate classification.

(f) A clerical error in either the classification assignment or the type of injury assignment of a given claim, or a group of claims, has been discovered by the insurer.

(g) A clerical error in either the classification assignment or the type of injury assignment of a given claim has been discovered by the rating organization. The insurer shall, when notified by the rating organization, file a revision of losses or make satisfactory explanation.

(h) A correction is made in a classification assignment of a given claim, or a group of claims, as a result of the organization test audit of an insured for which the experience has been submitted.

(i) The claim has been determined to be a joint coverage claim in accordance with the unit statistical plan approved by the commissioner.

SEC. 4. Section 11751.9 is added to the Insurance Code, to read:

11751.9. Whenever a claim or claims used in an experience rating are closed and reported pursuant to the unit statistical plan approved by the commissioner and are valued, in the aggregate, at an amount that is less than 60 percent of the highest reported aggregate value of all of these claims, then the experience rating shall be revised pursuant to the uniform experience rating plan approved by the commissioner based on the most current reported values for all claims used in the experience rating.

CHAPTER 749

An act to amend Sections 19352, 19352.5, 19352.8, 19353, 19353.5, 19354, 19354.5, 19356.6, and 19806 of the Welfare and Institutions Code, relating to human services.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 19352 of the Welfare and Institutions Code is amended to read:

19352. As used in this chapter:

(a) "Habilitation services" means those community-based services purchased or provided for adults with developmental disabilities including work activity and supported employment, to prepare and maintain them at their highest level of vocational functioning, or to prepare them for referral to vocational rehabilitation services.

(b) "Individual program plan" means the overall plan developed by a regional center pursuant to Section 4646.

(c) "Individual habilitation component" means the plan developed for each eligible individual for whom services are purchased under this chapter.

(d) "Department" means the Department of Rehabilitation.

(e) "Work-activity program" includes, but is not limited to, sheltered workshops or work-activity centers, or community-based work activity programs accredited under departmental regulations.

(f) "Habilitation team" means a group, which shall be established for each work-activity program or supported employment services, which shall be composed of the following members:

(1) The regional center case manager.

(2) The work-activity or supported employment program case-responsible individual.

(3) A habilitation specialist designated by the department.

(4) The work-activity or supported employment program consumer, and where appropriate, his or her parent, legal guardian, or conservator and any other individual named by the consumer.

(5) In cases where the work-activity or supported employment consumer is also a vocational rehabilitation consumer, the vocational rehabilitation counselor.

(g) "Work-activity program day" means the period of time during which a work-activity program provides services to clients.

(h) "Full day of service" means, for purposes of billing, a day in which the consumer attends a minimum of the declared and approved work-activity program day, less 30 minutes, excluding the lunch period.

(i) "Half day of service" means, for purposes of billing, (1) all days of attendance in which the consumer's attendance does not meet the criteria for billing for a full day of service as defined in subdivision (h), and (2) the consumer attends the work activity program not less than two hours excluding the lunch period.

(j) "Supported employment program" means a program which meets the requirements of Sections 19356.6 and 19356.7.

(k) "Consumer" means any individual who receives services purchased under this chapter.

(*l*) "Consumer with special needs" means any individual who needs an enriched program of services due to multiple disabling conditions or other unique needs of the consumer which include, but shall not be limited to, mobility impairments, blindness, deafness, or psychiatric impairment.

(m) "Accreditation" means a determination of compliance with the set of standards appropriate to the delivery of services by a work-activity program or supported employment program, developed by the CARF—The Rehabilitation Accreditation Commission, and applied by the commission or the department.

SEC. 2. Section 19352.5 of the Welfare and Institutions Code is amended to read:

19352.5. (a) The habilitation team shall meet when it is necessary to do any of the following:

(1) Determine if the services available at the work-activity program or supported employment program best meet the needs of the consumer.

(2) Determine initial eligibility.

(3) Develop an individual habilitation component.

(4) Review continued eligibility.

(5) Determine if the consumer would be better served by another work-activity or supported employment program.

(6) Determine the appropriateness of job placement.

(b) (1) If the habilitation specialist disagrees with the team, the habilitation specialist shall make the final decision subject to appeal to the department by the consumer or his or her designated representative.

(2) The habilitation specialist shall substantiate any decision made pursuant to paragraph (1) by doing all of the following:

(A) Stating in writing the reasons for disagreement and the decision.

(B) Stating that the decision is not made for fiscal reasons.

SEC. 3. Section 19352.8 of the Welfare and Institutions Code is amended to read:

19352.8. Only decisions made by the habilitation team or habilitation specialist with respect to the provisions listed in paragraphs (1) to (6), inclusive, of subdivision (a) of Section 19352.5 are subject to appeal. If a work-activity program or supported employment program consumer appeals a decision made pursuant

to paragraphs (1) to (6), inclusive, of subdivision (a) of Section 19352.5 to the department, the consumer shall, pending the outcome of the appeal, continue to receive the same level of services provided prior to appeal.

SEC. 4. Section 19353 of the Welfare and Institutions Code is amended to read:

19353. An individual shall be eligible for habilitation services under this chapter when all of the following exist:

(a) The individual is an adult who has been diagnosed as having a developmental disability.

(b) The disability is so severe that the individual does not presently have potential for competitive employment.

(c) The individual's disability is too severe for the individual to benefit from vocational rehabilitation services and it is determined that the individual may be mutually served by the vocational rehabilitation program and it is also determined that the individual needs extended supported employment services following successful rehabilitation by the department's vocational rehabilitation program.

(d) The individual is determined to be in need of habilitation services in an individual program plan developed by a regional center pursuant to Section 4646.

(e) The department verifies, as necessary, that the individual meets the eligibility criteria for habilitation services specified in subdivisions (a) to (d), inclusive, and the habilitation specialist signs a statement that the individual is eligible for habilitation services.

SEC. 5. Section 19353.5 of the Welfare and Institutions Code is amended to read:

19353.5. (a) When the department has made its determination of eligibility pursuant to subdivision (e) of Section 19353, the individual shall be placed in a work-activity program or, if placed on the waiting list for vocational rehabilitation services, a supported employment program, and shall be deemed presumptively eligible for the period not to exceed 90 days.

(b) During the period of presumptive eligibility, the work-activity program or supported employment program in which the individual is placed shall evaluate the performance of the individual in all of the following areas:

(1) Appropriate behavior to safely conduct himself or herself in a work setting.

(2) Adequate attention span to reach a productivity level in paid work.

(3) Ability to understand simple instructions within a reasonable length of time.

(4) Ability to communicate basic needs and understand basic receptive language.

(5) Attendance level.

(c) (1) During the period of presumptive eligibility, the habilitation team shall, utilizing the findings of the work-activity or supported employment program made pursuant to this section, determine the initial eligibility of the individual.

(2) The habilitation team shall meet only as necessary under Section 19352.5.

SEC. 6. Section 19354 of the Welfare and Institutions Code is amended to read:

19354. The individual program plan shall remain in effect as the overall service plan that is the responsibility of the regional center except that the department shall be responsible for the approval of the individual habilitation component of the individual program plan developed by the work-activity or supported employment program, and the purchase of habilitation services.

SEC. 7. Section 19354.5 of the Welfare and Institutions Code is amended to read:

19354.5. (a) The department shall monitor, evaluate, and audit habilitation services providers for program effectiveness taking into consideration criteria, including, but not limited to, all of the following:

(1) Service quality assurance.

(2) Cost effectiveness.

(3) Cost containment.

(4) Protections for individuals receiving services.

(5) An equitable rate system.

(6) Compliance with applicable standards of the CARF—The Rehabilitation Accreditation Commission.

(b) (1) The department may impose immediate sanctions on providers of work-activity programs and supported employment programs for noncompliance with accreditation or services standards contained in regulations adopted by the department, and safety violations which pose a threat to consumers of habilitation services. These sanctions shall include, but need not be limited to, a moratorium on new referrals, imposition of a corrective plan as specified in regulations, removal of consumers from a service area where dangerous conditions or abusive conditions exist, and termination of approval for habilitation funding.

(2) A moratorium on new referrals may be the first formal sanction to be taken except in instances where consumers are at imminent risk of abuse or other harm. In the case where a moratorium on new referrals is the first formal sanction, a corrective plan shall be developed simultaneously by the habilitation specialist. The moratorium shall be in place only until the conditions cited are corrected per the corrective plan as determined by the habilitation specialist.

(3) A corrective plan is a formal sanction that shall be taken simultaneously with a moratorium on new referrals, or may be taken as a single sanction in circumstances that do not require a

moratorium, as determined by the habilitation specialist. Noncompliance with the conditions and timelines of the corrective plan shall result in termination of approval for habilitation funding.

(4) Removal of consumers from a program shall only take place where dangerous or abusive conditions are present, or upon termination of approval for habilitation funding. In instances of removal for health and safety reasons, consumers may return, at their option, when the corrections are made by the program, as determined by the department.

(5) Any provider sanctioned under paragraph (2) or (3) may request an administrative review.

(A) The sanctioned provider shall submit its request for an administrative review, in writing, no later than 30 calendar days following written notice from the department on the sanctions imposed. The response shall be addressed to the Chief Deputy Director of the Department of Rehabilitation. The request for administrative review shall specify the reasons the appellant believes the sanctions should not be imposed and shall include supporting documentation. The department shall convene a Habilitation Services Program administrative review committee within 30 calendar days of receipt of a timely written request for an administrative review. The committee shall be made up of the Chief Deputy Director of the Department of Rehabilitation and the deputy directors or their designees. A written decision of the committee shall be mailed to the appellant within 15 working days of the administrative review.

(B) A provider sanctioned under paragraph (4) may also request an expedited administrative review from the deputy director directly responsible for the administration of the Habilitation Services Program. The expedited review request shall be made by 4 p.m. of the first full-working day following removal of the consumers. A telephone request to the deputy director, or his or her designee, stating a wish to appeal the removal of consumers and a statement of reasons shall be accepted when followed by written confirmation received in the deputy director's office no later than five working days after the action to remove consumers is taken. The expedited administrative review by the deputy director, or his or her designee, shall take place within five working days of receipt of a timely request. A written decision shall be issued within five working days of the expedited administrative review. The provider sanctioned under paragraph (4) may exercise the administrative review procedure referenced in subparagraph (A) in lieu of, or in addition to, the expedited administrative review. In the event both options are exercised, the regular administrative review shall serve as a second level review.

(6) Any provider sanctioned under paragraph (4) shall have a right to a formal review by the Office of Administrative Hearings

under Chapter 4 (commencing with Section 11370) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 8. Section 19356.6 of the Welfare and Institutions Code is amended to read:

19356.6. (a) The definitions contained in this subdivision shall govern the construction of this section, with respect to services provided through the Habilitation Services Program, and unless the context requires otherwise, the following terms shall have the following meanings:

(1) "Supported employment" means paid work that is integrated in the community for individuals with developmental disabilities whose vocational handicap is so severe that they would be unable to achieve this employment without specialized services and would not be able to retain this employment without an appropriate level of ongoing postemployment support services.

(2) "Integrated work" means the engagement of an employee with a disability in work in a natural community employment setting, including, but not limited to, groups and individual placements, in which the degree of integration is measured by the extent to which the disabled employee has opportunities to interact with nondisabled individuals other than those providing direct support services to the disabled employee.

(3) "Group placement" means the employment of a group containing at least three, but not more than eight, individuals with developmental disabilities working together in an integrated work setting in the community.

(4) "Individual placement" means the employment of an individual with a developmental disability by an employer in the community, directly or through contract with a supported employment program, and providing supported employment services which are intended to lead to employer-paid and employer-supervised employment, and where services decrease as the individual adjusts to the job; and providing ongoing postemployment services necessary for the individual to retain the job.

(5) "Allowable supported employment services" means the services approved in the individual habilitation component and provided, to the extent allowed by the Habilitation Services Program, for the purpose of achieving supported employment as an outcome for individuals with developmental disabilities, which may include any of the following:

(A) Program staff time spent conducting task analysis on a supported employment opportunity for a specific consumer or group of consumers.

(B) Program staff time spent in the direct supervision or training of a consumer or consumers while they are engaged in integrated work designed to achieve supported employment unless other arrangements for consumer supervision, such as employer

supervision reimbursed by the work-activity program, are approved by the Habilitation Services Program.

(C) Social skills training which is necessary to ensure job adjustment and retention, and which is provided in an integrated setting, unless otherwise approved by the Habilitation Services Program.

(D) Training in certain independent living skills, such as independent travel or money management, which is necessary to ensure job adjustment and retention and which is provided in the community, unless otherwise approved by the Habilitation Services Program.

(E) Counseling with family, care providers, or others to ensure necessary support to consumers' job adjustment or to overcome problems affecting their job performance.

(F) Direct action to advocate on behalf of a consumer to resolve problems affecting the consumer's work adjustment or retention of an integrated job.

(G) Intervention with the employer to review a consumer's job performance, resolve job problems or facilitate the employer's hiring of the consumer as an employee.

(H) In the case of groups which must take equipment or materials to and from the worksite, the time the group members spend preparing for, and ending, the day's work.

(I) In the case of individual placements, job development to the extent authorized by the Habilitation Services Program, and ongoing postemployment support services needed to ensure the consumer's retention of the job.

(J) In the case of developing group placement job sites, the staff time spent obtaining and arranging the jobsite for the first three consumers employed in the group placement.

(b) (1) The Habilitation Services Program shall set hourly rates for supported employment services provided in accordance with this section. The Habilitation Services Program shall apply those rates to those work-activity programs or program components of work-activity programs approved by the department to provide community-integrated services under former paragraph (3) of subdivision (d) of Section 19356.5, and to new programs or components approved by the Habilitation Services Program to provide supported employment services following enactment of this section. Both of these categories of programs or components shall be required to comply with the criteria set forth in subdivision (b) of Section 19356.7 to receive approval from the Habilitation Services Program.

(2) (A) The hourly rate for supported employment services provided to consumers in group placements shall be four dollars ($4) per client or, in the case of new components of existing programs, the work-activity program's daily rate converted to an hourly rate

according to the formula set forth in subdivision (c), whichever hourly rate is the higher.

(B) The Habilitation Services Program may, at its discretion, set a higher hourly rate for supported employment services provided to individual consumers in a group placement, based upon the additional cost to provide ancillary services to the individual within the group placement in accordance with ratesetting procedures set forth in regulations, when there is documentation that demonstrates a need for a higher rate because of the nature and severity of the disabilities of the individual consumer, as determined by the Habilitation Services Program.

(C) A consumer in group placement for which a higher rate, due to the nature and severity of the consumer's disability, had been in effect on December 31, 1996, shall continue to be funded at the higher rate until he or she is no longer employed in the specific group placement receiving the higher rate, or until it is determined that the nature and severity of the consumer's disability no longer justifies the higher rate.

(3) The hourly rate for supported employment services provided to consumers in individual placement shall be twenty dollars ($20) per consumer for one-to-one services. If more than one consumer is receiving supported employment services simultaneously at the same site, the amount to be reimbursed per hour of service provided shall not exceed the approved hourly rate for the supported employment program regardless of the number of consumers receiving service during the hour.

(4) These hourly rates shall be subject to rate adjustments provided by law commencing with the 1987–88 fiscal year.

(5) (A) Commencing July 1, 1991, the department shall add to each supported employment program rate an amount that is the equivalent of the hourly reimbursement received by the program for administrative services delivered during the period of July 1, 1990, to March 31, 1991, inclusive.

(B) For programs approved after July 1, 1991, pursuant to Section 19356.7, the statewide average for hourly reimbursement for administrative services shall be applied to the rate.

(6) It is the intent of the Legislature that, commencing July 1, 1996, the department establish rates for both habilitation services and vocational rehabilitation supported employment services pursuant to this section.

(c) (1) When a consumer receives traditional work-activity services and supported employment services during the same payment period, the Habilitation Services Program shall convert the daily rate for the traditional work-activity services into an hourly rate for the purpose of paying for those traditional work-activity services received by that consumer. In its conversion of the daily rate into any hourly rate, the Habilitation Services Program shall use the formula in paragraph (2).

(2) The daily rate of the work-activity program shall be divided by the number of hours in the program day of the traditional work-activity program during the historical period on which its rate is based, or as of the date the Habilitation Services Program approved the work-activity program as a new provider of habilitation services plus 5 percent.

(d) If a consumer has been placed on a waiting list for vocational rehabilitation as a result of the department's order of selection regulations, the Habilitation Services Program may pay for those supported employment services leading to job development set forth in subparagraphs (A), (C), (D), (E), (I), and (J) of paragraph (5) of subdivision (a).

SEC. 8.5. Section 19356.6 of the Welfare and Institutions Code is amended to read:

19356.6. (a) The definitions contained in this subdivision shall govern the construction of this section, with respect to services provided through the Habilitation Services Program, and unless the context requires otherwise, the following terms shall have the following meanings:

(1) "Supported employment" means paid work that is integrated in the community for individuals with developmental disabilities whose vocational disability is so severe that they would be unable to achieve this employment without specialized services and would not be able to retain this employment without an appropriate level of ongoing postemployment support services.

(2) "Integrated work" means the engagement of an employee with a disability in work in a community employment setting in which the degree of integration is measured by the extent to which the disabled employee has opportunities to interact with nondisabled individuals, other than those paid to provide direct support services to the disabled employee.

(3) "Supported employment placement" means the employment of an individual with a developmental disability by an employer in the community, directly or through contract with a supported employment program, and the provision of supported employment services, and the provision of ongoing postemployment services necessary for the individual to retain employment. Services for those individuals receiving one-to-one training and support services from a supported employment program shall decrease as the individual adjusts to his or her employment and the employer assumes many of those functions.

(4) For individuals receiving postemployment support services at a job coach-to-client ratio of one-to-one or one-to-two, postemployment services may be provided on or off the jobsite, except that no ancillary services may be provided pursuant to subparagraph (A) of paragraph (2) of subdivision (b).

(5) For individuals receiving postemployment support services at a job coach-to-client ratio of other than one-to-one or one-to-two,

ancillary services may be provided, except that all postemployment and ancillary services shall be provided at the worksite.

(6) "Allowable supported employment services" means the services approved in the individual habilitation component and provided, to the extent allowed by the Habilitation Services Program, for the purpose of achieving supported employment as an outcome for persons with developmental disabilities, that may include any of the following:

(A) Program staff time spent conducting job analysis of supported employment opportunities for a specific consumer.

(B) Program staff time spent in the direct supervision or training of a consumer or consumers while they engage in integrated work unless other arrangements for consumer supervision, such as employer supervision reimbursed by the supported employment program, are approved by the Habilitation Services Program.

(C) Training occurring in the community, in adaptive functional and social skills necessary to ensure job adjustment and retention such as social skills, money management, and independent travel.

(D) Counseling with a consumer's significant other to ensure support of a consumer in job adjustment.

(E) Advocacy or intervention on behalf of a consumer to resolve problems affecting the consumer's work adjustment or retention.

(F) Job development, to the extent authorized by the Habilitation Services Program.

(G) Ongoing postemployment support services needed to ensure the consumer's retention of the job.

(b) (1) The Habilitation Services Program shall set rates for supported employment services provided in accordance with this section. The Habilitation Services Program shall apply those rates to those work-activity programs or program components of work-activity programs approved by the department to provide supported employment and to new programs or components approved by the Habilitation Services Program to provide supported employment services. Both of these categories of programs or components shall be required to comply with the criteria set forth in subdivision (b) of Section 19356.7 to receive approval from the Habilitation Services Program.

(2) The hourly rate for supported employment services shall be twenty-seven dollars and fifty cents ($27.50). If more than one consumer is receiving supported employment services from the same job coach, the following shall apply:

(A) The total amount reimbursed for that service shall not exceed the authorized rate for supported employment services. In addition, the Habilitation Services Program may set a higher hourly rate for supported employment services provided to an individual in this configuration, based upon the additional cost to provide ancillary services, when there is a documented and demonstrated need for a

higher rate because of the nature and severity of the disabilities of the consumer, as determined by the Habilitation Services Program.

(B) In addition, fees shall be authorized for the following:

(i) A two hundred dollar ($200) fee shall be paid upon intake of a consumer into an agency's supported employment program, unless that individual has completed a supported employment intake process with that same agency within the past 12 months, in which case no fee shall be paid.

(ii) A four hundred dollar ($400) fee shall be paid upon placement of an individual in an integrated job, unless that individual is placed with another consumer or consumers assigned to the same job coach during the same hours of employment, in which case no fee shall be paid.

(iii) A four hundred dollar ($400) fee shall be paid after a 90-day retention of a consumer in a job, unless that individual has been placed with another consumer or consumers assigned to the same job coach during the same hours of employment, in which case no fee shall be paid.

(3) These rates shall take effect on July 1, 1998.

(4) It is the intent of the Legislature that, commencing July 1, 1996, the department establish rates for both habilitation services and vocational rehabilitation supported employment services pursuant to this section.

(c) If a consumer has been placed on a waiting list for vocational rehabilitation as a result of the department's order of selection regulations, the Habilitation Services Program may pay for those supported employment services leading to job development set forth in subparagraph (B) of paragraph (2) of subdivision (b).

SEC. 9. Section 19806 of the Welfare and Institutions Code is amended to read:

19806. (a) For each fiscal year commencing with the 1984–85 fiscal year, an independent living center shall not be required to provide any matching funds through private contributions as a condition of receiving state funds except to acquire state incentive funds. An independent living center whose allocation of funds pursuant to this chapter, excluding state incentive funds, is less than one hundred fifty thousand dollars ($150,000) shall, to the extent funds are appropriated by the Legislature and allocated in accordance with regulations adopted by the department, receive, during the 1984–85 fiscal year, an amount of state funds pursuant to this section, in an amount equal to 50 percent of the difference between one hundred fifty thousand dollars ($150,000) and the independent living center's allocation under this chapter. During the 1985–86 fiscal year, and each fiscal year thereafter, until the 1994–95 fiscal year, each independent living center shall receive, to the extent funds are appropriated by the Legislature and allocated in accordance with regulations adopted by the department, except for state incentive funds, at least one hundred fifty thousand ($150,000)

in funds allocated under this chapter. Beginning with the 1994–95 fiscal year, and each fiscal year thereafter, each independent living center shall receive, to the extent funds are appropriated by the Legislature and allocated in accordance with regulations adopted by the department, excluding state incentive funds, at least one hundred seventy-five thousand dollars ($175,000) in funds allocated under this chapter. However, beginning with the 1994–95 fiscal year, and for each fiscal year thereafter, state funds may be replaced by reimbursements under the Supplemental Security Disability Insurance and the Supplemental Security Income programs provided for under Titles II and XVII of the Federal Social Security Act, Subchapter II (commencing with Section 401) and Subchapter XVII (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code to the extent appropriated by the Legislature and allocated by the department to independent living centers under this chapter. Beginning with the 1996–97 fiscal year, and each year thereafter, to the extent these funds from the Social Security Act are not appropriated by the Legislature as were appropriated in the 1995–96 fiscal year, an amount equal to the combined state and federal fund allocation to independent living centers in the Budget Act of 1995 shall be appropriated to, and allocated by, the department to independent living centers under this chapter.

(b) (1) In addition to funds received pursuant to subdivision (a), and subject to the limitations of subdivision (c), to the extent funds are appropriated by the Legislature, and allocated in accordance with regulations adopted by the department, each independent living center shall have the amount of its private contributions which, for any fiscal year, exceeds the amount of private contributions received by the independent living center during the 1982–83 fiscal year matched by state incentive funds on the basis of one dollar ($1) in state incentive funds for each one dollar ($1) received in private contributions.

(2) Available state incentive funds shall be allocated at the beginning of each fiscal year based upon the private contributions received by the independent living center in the second preceding fiscal year.

(3) For the purpose of determining eligibility for state incentive funds, any independent living center that uses a fiscal year other than the state fiscal year may elect to use a different fiscal year so long as the closing date of the fiscal year so elected does not precede the closing date of the equivalent state fiscal year by more than 11 months.

(4) The amount of private contributions claimed by an independent living center for each fiscal year, including the 1982–83 fiscal year, shall be verified by the department by utilizing appropriate financial records including, but not limited to, independent audits. Audits may be performed by the department up to three years from the close of the fiscal year during which state

incentive funds were received by the independent living center being audited.

(c) The maximum amount of incentive funds as defined in subdivision (d) that may be acquired by any independent living center in any single fiscal year shall be computed as follows:

(1) Each independent living center funded under Section 19803 shall be entitled to acquire state incentive funds as specified in subdivision (b) in an amount not to exceed the total available state incentive funds, divided by the number of independent living centers then funded under Section 19803.

(2) Incentive funds remaining after the initial allocation pursuant to paragraph (1) shall be allocated among centers with remaining unmatched private contributions. Each center with remaining unmatched private contributions shall be allowed to match remaining incentive funds in an amount equal to the total remaining incentive funds divided by the number of centers with remaining private contributions. Subsequent distributions shall be made pursuant to the formula described in the preceding sentence and shall be repeated as many times as is necessary to allocate incentive funds to the greatest extent possible.

(3) State incentive funds not distributed to independent living centers under paragraph (1) or (2) shall not be allocated under Section 19803 nor retained by the department for distribution as state incentive funds in later fiscal years.

(d) For purposes of this section:

(1) "Private funds" does not include any funds originating from any entity of the federal, state, city, or county government or any political subdivision thereof.

(2) "State incentive funds" means state funds appropriated by the Legislature for purposes of this chapter, except those funds allocated by the department pursuant to Section 19803 and subdivision (a) of this section.

(e) Any funds allocated under this chapter to any independent living center, other than as part of the initial allocation for each fiscal year, shall be made by contract amendment. Any such contract amendment shall require the provision of services in addition to that required by the contract being amended. All such services required by contract amendment shall not be performed prior to the date the contract amendment is approved by the state.

SEC. 10. Section 8.5 of this bill incorporates amendments to Section 19356.6 of the Welfare and Institutions Code proposed by both this bill and AB 715. 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 19356.6 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 715, in which case Section 8 of this bill shall not become operative.

CHAPTER 750

An act to amend Sections 669, 1170, 1170.1, 1170.13, and 1170.15 of, to add Section 1170.11 to, and to repeal Section 1170.95 of, the Penal Code, relating to sentencing.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 669 of the Penal Code is amended to read:

669. When any person is convicted of two or more crimes, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same judge or by different judges, the second or other subsequent judgment upon which sentence is ordered to be executed shall direct whether the terms of imprisonment or any of them to which he or she is sentenced shall run concurrently or consecutively. Life sentences, whether with or without the possibility of parole, may be imposed to run consecutively with one another, with any term imposed for applicable enhancements, or with any other term of imprisonment for a felony conviction. Whenever a person is committed to prison on a life sentence which is ordered to run consecutive to any determinate term of imprisonment, the determinate term of imprisonment shall be served first and no part thereof shall be credited toward the person's eligibility for parole as calculated pursuant to Section 3046 or pursuant to any other section of law that establishes a minimum period of confinement under the life sentence before eligibility for parole.

In the event that the court at the time of pronouncing the second or other judgment upon that person had no knowledge of a prior existing judgment or judgments, or having knowledge, fails to determine how the terms of imprisonment shall run in relation to each other, then, upon that failure to determine, or upon that prior judgment or judgments being brought to the attention of the court at any time prior to the expiration of 60 days from and after the actual commencement of imprisonment upon the second or other subsequent judgments, the court shall, in the absence of the defendant and within 60 days of the notice, determine how the term of imprisonment upon the second or other subsequent judgment shall run with reference to the prior incompleted term or terms of imprisonment. Upon the failure of the court to determine how the terms of imprisonment on the second or subsequent judgment shall run, the term of imprisonment on the second or subsequent judgment shall run concurrently.

The Department of Corrections shall advise the court pronouncing the second or other subsequent judgment of the existence of all prior

judgments against the defendant, the terms of imprisonment upon which have not been completely served.

SEC. 2. Section 1170 of the Penal Code is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The Legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.

(2) Paragraph (1) shall not be construed to preclude programs, including educational programs, that are designed to rehabilitate nonviolent, first-time felony offenders. The Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent, first-time felony offenders consistent with the purpose of imprisonment.

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term which it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law which imposes the death penalty, which authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life. In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence, including any period of parole under Section 3000, shall be deemed to have been served and the defendant shall not be actually delivered to the custody of the Director of Corrections. However, that sentence shall be deemed a separate prior prison term under Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the Director of Corrections.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or

mitigation of the crime. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. In determining whether there are circumstances that justify imposition of the upper or lower term, the court may consider the record in the case, the probation officer's report, other reports including reports received pursuant to Section 1203.03 and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall set forth on the record the facts and reasons for imposing the upper or lower term. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under Section 667.5, 1170.1, 12022, 12022.4, 12022.5, 12022.6, or 12022.7, or under any other provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term he or she may be on parole for a period as provided in Section 3000.

(d) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison and has been committed to the custody of the Director of Corrections, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the Director of Corrections or the Board of Prison Terms, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The resentence under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

(e) Any sentence imposed under this article shall be subject to the provisions of Sections 3000 and 3057 and any other applicable provisions of law.

(f) A sentence to state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

SEC. 2.5. Section 1170 of the Penal Code is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The

Legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion. The Legislature also finds and declares that because the purpose of incarceration is punishment, that purpose is no longer served by the continued incarceration of certain inmates who are terminally ill with less than six months to live who are permanently and severely incapacitated, provided they no longer pose a risk to public safety. Moreover, the Legislature finds and declares that the Department of Corrections is in the position to determine at what point an inmate is no longer a threat if the inmate is sentenced pursuant to subdivision (a) of Section 1168. The Legislature finds and declares that the Board of Prison Terms is in the position to determine at what point an inmate is no longer a threat if the inmate is sentenced pursuant to subdivision (b) of Section 1168 or prior law. In no case shall determinations by the Department of Corrections or the Board of Prison Terms supersede or compromise the Governor's authority.

(2) Paragraph (1) shall not be construed to preclude programs, including educational programs, that are designed to rehabilitate nonviolent, first-time felony offenders. The Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent, first-time felony offenders consistent with the purpose of imprisonment.

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term which it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law which imposes the death penalty, which authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life. In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence, including any period of parole under Section 3000, shall be deemed to have been served and the defendant shall not be actually delivered to the custody of the Director of Corrections. However, that sentence shall

be deemed a separate prior prison term under Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the Director of Corrections.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. In determining whether there are circumstances that justify imposition of the upper or lower term, the court may consider the record in the case, the probation officer's report, other reports including reports received pursuant to Section 1203.03 and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall set forth on the record the facts and reasons for imposing the upper or lower term. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under Section 667.5, 1170.1, 12022, 12022.4, 12022.5, 12022.6, or 12022.7, or under any other provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term he or she may be on parole for a period as provided in Section 3000.

(d) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison and has been committed to the custody of the Director of Corrections, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the Director of Corrections or the Board of Prison Terms, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The resentence under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

(e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a) of Section 1170, if the Director of Corrections or the Board of Prison Terms or both determine that a prisoner satisfies the criteria set forth in paragraph (2), the director or the board may recommend to the court that the prisoner's sentence be recalled.

(2) The court shall have the discretion to resentence or recall if the court finds both of the following:

(A) The prisoner is either of the following, as determined by a physician employed by the department:

(i) Terminally ill with an incurable condition caused by an illness or disease that would produce death within six months.

(ii) Permanently and severely physically incapacitated.

(B) The conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

The Board of Prison Terms shall make findings pursuant to this paragraph before making a recommendation for resentence or recall to the court. This paragraph does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

(3) Within 10 days of receipt of a positive recommendation by the director or the board, the court shall hold a hearing to consider whether the prisoner's sentence should be recalled.

(4) The prisoner or his or her family member or designee may request consideration for recall and resentencing by contacting the chief medical officer at the prison or the Director of Corrections. Upon receipt of the request, if the director determines that the prisoner satisfies the criteria set forth in paragraph (2), the director or board may recommend to the court that the prisoner's sentence be recalled. The director shall submit a recommendation for or against release within 30 days in the case of inmates sentenced to determinate terms and, in the case of inmates sentenced to indeterminate terms, the director may make a recommendation to the Board of Prison Terms with respect to the inmates who have applied under this section. The board shall consider this information and make an independent judgment pursuant to paragraph (2) and make findings related thereto before rejecting the request or making a recommendation to the court. This action shall be taken at the next lawfully noticed board meeting.

(5) Any recommendation for recall submitted to the court by the Director of Corrections or the Board of Prison Terms shall include one or more medical evaluations, a postrelease plan, and findings pursuant to paragraph (2).

(6) If possible, the matter shall be heard before the same judge of the court who sentenced the prisoner.

(f) Any sentence imposed under this article shall be subject to the provisions of Sections 3000 and 3057 and any other applicable provisions of law.

(g) A sentence to state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

SEC. 3. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivisions (b) and (c), and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different

proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed for applicable enhancements for prior convictions, prior prison terms, and Section 12022.1. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any term imposed for applicable specific enhancements. The subordinate term for each consecutive offense which is not a "violent felony," as defined in subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any specific enhancements. Except as otherwise provided by law, the total of subordinate terms for those consecutive offenses which are not "violent felonies," as defined in subdivision (c) of Section 667.5, shall not exceed five years. The subordinate term for each consecutive offense which is a "violent felony," as defined in any paragraph of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of the term imposed for any specific enhancements applicable to those subordinate offenses.

(b) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207 or 208, involving separate victims, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the full middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include the full term imposed for specific enhancements applicable to those subordinate offenses. The total of the subordinate terms imposed pursuant to this subdivision may exceed five years.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and

convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170, the court shall also impose the additional terms provided for any applicable enhancements. The court shall also impose any other additional term that the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) All enhancements 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.

(f) When two or more enhancements may be imposed for being armed with or using a dangerous or deadly weapon or a firearm in the commission of a single offense, only the greatest of those enhancements shall be imposed for that offense. This subdivision shall not limit the imposition of any other enhancements applicable to that offense, including an enhancement for the infliction of great bodily injury.

(g) When two or more enhancements may be imposed for the infliction of great bodily injury in the commission of a single offense, only the greatest of those enhancements shall be imposed for that offense. This subdivision shall not limit the imposition of any other enhancements applicable to that offense, including an enhancement for being armed with or using a dangerous or deadly weapon or firearm.

(h) For any violation of paragraph (2), (3), or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements that may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this section, Section 667.6, or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 4. Section 1170.11 is added to the Penal Code, to read:

1170.11. As used in Section 1170.1, the term "specific enhancement" includes, but is not limited to, the enhancements provided in Sections 186.10, 186.11, 186.22, 273.4, 290, 290.4, and 347, subdivisions (a), (b), and (c) of Section 422.75, Sections 451.1, 452.1, 593a, 600, 667.8, 667.83, 667.85, 667.9, 667.10, 667.15, 667.16, 674, 12021.5, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, 12022.85, 12022.9, 12022.95, 12072, and 12280 of this code, and in Section 11353.1, subdivision (b) of Section 11353.4, Sections 11353.6, 11356.5, 11370.4, 11379.7, 11379.8, 11380.1, and

11380.5 of the Health and Safety Code, and in Sections 20001 and 23182 of the Vehicle Code.

SEC. 5. Section 1170.13 of the Penal Code is amended to read:

1170.13. Notwithstanding subdivision (a) of Section 1170.1 which provides for the imposition of a subordinate term for a consecutive offense of one-third of the middle term of imprisonment, if a person is convicted pursuant to subdivision (b) of Section 139, the subordinate term for each consecutive offense shall consist of the full middle term. The total of the subordinate terms imposed pursuant to this section may exceed five years.

SEC. 6. Section 1170.15 of the Penal Code is amended to read:

1170.15. Notwithstanding the provisions of subdivision (a) of Section 1170.1 which provide for the imposition of a subordinate term for a consecutive offense of one-third of the middle term of imprisonment, if a person is convicted of a felony, and of an additional felony which is a violation of Section 136.1 or 137 and which was committed against the victim of, or a witness or potential witness with respect to, or a person who was about to give material information pertaining to, the first felony, or of a felony violation of Section 653f which was committed to dissuade a witness or potential witness to the first felony, the subordinate term for each consecutive offense which is a felony described in this section shall consist of the full middle term of imprisonment for the felony for which a consecutive term of imprisonment is imposed, and shall include the full term prescribed for any enhancements imposed pursuant to Section 12022, 12022.5, or 12022.7. The total of the subordinate terms imposed pursuant to this section may exceed five years.

SEC. 7. Section 1170.95 of the Penal Code is amended to read:

1170.95. (a) Notwithstanding Section 1170.1 relating to the maximum total of subordinate terms for consecutive offenses that are not "violent felonies," the total of the subordinate terms for consecutive offenses that are all residential burglaries may exceed five years.

(b) Notwithstanding Section 1170.1 relating to the maximum total of subordinate terms for consecutive offenses that are not "violent felonies," the total of the subordinate terms for consecutive offenses that are all residential robberies may exceed five years.

(c) Notwithstanding Section 1170.1 relating to the maximum total of subordinate terms for consecutive offenses that are not "violent felonies," the total of the subordinate terms for consecutive offenses that are all residential arsons may exceed five years.

(d) When a subordinate consecutive term of imprisonment is imposed pursuant to Sections 669 and 1170 that involves one or more convictions for robbery where it is charged and found that in each of those robberies that the defendant personally used a deadly or dangerous weapon in the commission of that robbery, as provided in subdivision (b) of Section 12022, and each of those robberies is not a violent felony, as defined in subdivision (c) of Section 667.5, the

aggregate term shall be calculated as provided in subdivision (a) of Section 1170.1, except that the subordinate term for each subordinate robbery conviction shall consist of one-third of the middle term of imprisonment and one-third of the enhancement provided in subdivision (b) of Section 12022. Notwithstanding Section 1170.1, the total of the subordinate terms imposed under this subdivision may exceed five years.

(e) As used in this section, "residential burglary" means burglary of an inhabited dwelling house, 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 Section 635 of the Vehicle Code, or the inhabited portion of any other building.

(f) As used in this section, "residential robbery" means a robbery that is perpetrated in an inhabited dwelling house, 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 Section 635 of the Vehicle Code, or the inhabited portion of any other building.

(g) As used in this section, "residential arson" means arson committed in violation of subdivision (b) of Section 451 where it is charged and proved that the defendant intentionally set fire to or burned or caused the burning of a distinct inhabited structure or a distinct inhabited property in the commission of that offense.

SEC. 8. Section 2.5 of this bill incorporates amendments to Section 1170 of the Penal Code proposed by both this bill and AB 29. 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 1170 of the Penal Code, and (3) this bill is enacted after AB 29, in which case Section 2 of this bill shall not become operative.

SEC. 9. In repealing subdivision (h) of Section 1170.1, which permitted the court to strike the punishment for certain listed enhancements, it is not the intent of the Legislature to alter the existing authority and discretion of the court to strike those enhancements or to strike the additional punishment for those enhancements pursuant to Section 1385, except insofar as that authority is limited by other provisions of the law.

CHAPTER 751

An act to amend Section 1170 of the Penal Code, relating to prisoners.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 1170 of the Penal Code is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The Legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.

(2) Paragraph (1) shall not be construed to preclude programs, including educational programs, that are designed to rehabilitate nonviolent, first-time felony offenders. The Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent, first-time felony offenders consistent with the purpose of imprisonment.

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of 16 months, two or three years; two, three, or four years; two, three, or five years; three, four, or five years; two, four, or six years; three, four, or six years; three, five, or seven years; three, six, or eight years; five, seven, or nine years; five, seven, or 11 years, or any other specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term which it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law which imposes the death penalty, which authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life. In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence, including any period of parole under Section 3000, shall be deemed to have been served and the defendant shall not be actually delivered to the custody of the Director of Corrections. However, that sentence shall be deemed a separate prior prison term under Section 667.5, and a

copy of the judgment and other necessary documentation shall be forwarded to the Director of Corrections.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. In determining whether there are circumstances that justify imposition of the upper or lower term, the court may consider the record in the case, the probation officer's report, other reports including reports received pursuant to Section 1203.03 and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall set forth on the record the facts and reasons for imposing the upper or lower term. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under Section 667.5, 1170.1, 12022, 12022.4, 12022.5, 12022.6, or 12022.7 or under any other section of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term he or she may be on parole for a period as provided in Section 3000.

(d) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison and has been committed to the custody of the Director of Corrections, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the Director of Corrections or the Board of Prison Terms, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The resentence under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

(e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a) of Section 1170, if the Director of Corrections or the Board of Prison Terms or both determine that a prisoner satisfies the criteria set forth in paragraph (2), the director or the board may recommend to the court that the prisoner's sentence be recalled.

(2) The court shall have the discretion to resentence or recall if the court finds both of the following:

(A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within six months, as determined by a physician employed by the department.

(B) The conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

The Board of Prison Terms shall make findings pursuant to this subdivision before making a recommendation for resentence or recall to the court. This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

(3) Within 10 days of receipt of a positive recommendation by the director or the board, the court shall hold a hearing to consider whether the prisoner's sentence should be recalled.

(4) The prisoner or his or her family member or designee may request consideration for recall and resentencing by contacting the chief medical officer at the prison or the Director of Corrections. Upon receipt of the request, if the director determines that the prisoner satisfies the criteria set forth in paragraph (2), the director or board may recommend to the court that the prisoner's sentence be recalled. The director shall submit a recommendation for release within 30 days in the case of inmates sentenced to determinate terms and, in the case of inmates sentenced to indeterminate terms, the director may make a recommendation to the Board of Prison Terms with respect to the inmates who have applied under this section. The board shall consider this information and make an independent judgment pursuant to paragraph (2) and make findings related thereto before rejecting the request or making a recommendation to the court. This action shall be taken at the next lawfully noticed board meeting.

(5) Any recommendation for recall submitted to the court by the Director of Corrections or the Board of Prison Terms shall include one or more medical evaluations, a postrelease plan, and findings pursuant to paragraph (2).

(6) If possible, the matter shall be heard before the same judge of the court who sentenced the prisoner.

(f) Any sentence imposed under this article shall be subject to the provisions of Sections 3000 and 3057 and any other applicable provisions of law.

(g) A sentence to state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

SEC. 2. Section 1170 of the Penal Code is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The

Legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.

(2) Paragraph (1) shall not be construed to preclude programs, including educational programs, that are designed to rehabilitate nonviolent, first-time felony offenders. The Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent, first-time felony offenders consistent with the purpose of imprisonment.

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term which it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law which imposes the death penalty, which authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life. In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence, including any period of parole under Section 3000, shall be deemed to have been served and the defendant shall not be actually delivered to the custody of the Director of Corrections. However, that sentence shall be deemed a separate prior prison term under Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the Director of Corrections.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. In determining whether there are circumstances that justify imposition of the upper or lower term, the court may consider the record in the case, the probation officer's report, other reports including reports

received pursuant to Section 1203.03 and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall set forth on the record the facts and reasons for imposing the upper or lower term. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under Section 667.5, 1170.1, 12022, 12022.4, 12022.5, 12022.6, or 12022.7, or under any other provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term he or she may be on parole for a period as provided in Section 3000.

(d) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison and has been committed to the custody of the Director of Corrections, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the Director of Corrections or the Board of Prison Terms, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The resentence under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

(e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a) of Section 1170, if the Director of Corrections or the Board of Prison Terms or both determine that a prisoner satisfies the criteria set forth in paragraph (2), the director or the board may recommend to the court that the prisoner's sentence be recalled.

(2) The court shall have the discretion to resentence or recall if the court finds both of the following:

(A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within six months, as determined by a physician employed by the department.

(B) The conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

The Board of Prison Terms shall make findings pursuant to this subdivision before making a recommendation for resentence or recall to the court. This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

(3) Within 10 days of receipt of a positive recommendation by the director or the board, the court shall hold a hearing to consider whether the prisoner's sentence should be recalled.

(4) The prisoner or his or her family member or designee may request consideration for recall and resentencing by contacting the chief medical officer at the prison or the Director of Corrections. Upon receipt of the request, if the director determines that the prisoner satisfies the criteria set forth in paragraph (2), the director or board may recommend to the court that the prisoner's sentence be recalled. The director shall submit a recommendation for release within 30 days in the case of inmates sentenced to determinate terms and, in the case of inmates sentenced to indeterminate terms, the director may make a recommendation to the Board of Prison Terms with respect to the inmates who have applied under this section. The board shall consider this information and make an independent judgment pursuant to paragraph (2) and make findings related thereto before rejecting the request or making a recommendation to the court. This action shall be taken at the next lawfully noticed board meeting.

(5) Any recommendation for recall submitted to the court by the Director of Corrections or the Board of Prison Terms shall include one or more medical evaluations, a postrelease plan, and findings pursuant to paragraph (2).

(6) If possible, the matter shall be heard before the same judge of the court who sentenced the prisoner.

(f) Any sentence imposed under this article shall be subject to the provisions of Sections 3000 and 3057 and any other applicable provisions of law.

(g) A sentence to state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

SEC. 3. Section 2 of this bill incorporates amendments to Section 1170 of the Penal Code proposed by both this bill and SB 721. 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 1170 of the Penal Code, and (3) this bill is enacted after SB 721, in which case Section 1 of this bill shall not become operative.

CHAPTER 752

An act to add Section 1684.5 to the Business and Professions Code, relating to dentistry.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 1684.5 is added to the Business and Professions Code, to read:

1684.5. (a) In addition to other acts constituting unprofessional conduct under this chapter, it is unprofessional conduct for any dentist to perform or allow to be performed any treatment on a patient who is not a patient of record of that dentist. A dentist may, however, after conducting a preliminary oral examination, require or permit any dental auxiliary to perform procedures necessary for diagnostic purposes, provided that the procedures are permitted under the auxiliary's authorized scope of practice. Additionally, a dentist may require or permit a dental auxiliary to perform all of the following duties prior to any examination of the patient by the dentist, provided that the duties are authorized for the particular classification of dental auxiliary pursuant to Article 7 (commencing with Section 1740):

(1) Expose emergency radiographs upon direction of the dentist.

(2) Perform extra-oral duties or functions specified by the dentist.

(3) Perform mouth-mirror inspections of the oral cavity, to include charting of obvious lesions, malocclusions, existing restorations, and missing teeth.

(b) For purposes of this section, "patient of record" refers to a patient who has been examined, has had a medical and dental history completed and evaluated, and has had oral conditions diagnosed and a written plan developed by the licensed dentist.

(c) This section shall not apply to dentists providing examinations on a temporary basis outside of a dental office in settings including, but not limited to, health fairs and school screenings.

(d) This section shall not apply to fluoride mouth rinse or supplement programs administered in a school or preschool setting.

SEC. 2. This act shall become operative only if Assembly Bill 560 of the 1997–98 Regular Session of the Legislature is enacted and becomes effective on or before January 1, 1998.

CHAPTER 753

An act to amend Sections 1725, 1741, 1750, 1751, and 1764 of, and to add Sections 1765, 1768, and 1770 to, the Business and Professions Code, and to amend Section 14132 of the Welfare and Institutions Code, relating to dentistry, and making an appropriation therefor.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 1725 of the Business and Professions Code is amended to read:

1725. The amount of the fees prescribed by this chapter that relate to the licensing of dental auxiliaries shall be established by board resolution and subject to the following limitations:

(a) The application fee for an original license shall not exceed twenty dollars ($20).

(b) The fee for examination for licensure as a registered dental assistant shall not exceed fifty dollars ($50) for the written examination and shall not exceed sixty dollars ($60) for the practical examination.

(c) The fee for examination for licensure as a registered dental assistant in extended functions shall not exceed two hundred fifty dollars ($250).

(d) The fee for examination for licensure as a registered dental hygienist shall not exceed two hundred twenty dollars ($220).

(e) The fee for examination for licensure as a registered dental hygienist in extended functions shall not exceed two hundred fifty dollars ($250).

(f) The board shall establish the fee at an amount not to exceed actual cost for licensure as a registered dental hygienist in alternative practice.

(g) The biennial renewal fee for a dental auxiliary whose license expires on or after January 1, 1991, shall not exceed sixty dollars ($60). On or after January 1, 1992, the board may set the renewal fee in an amount not to exceed eighty dollars ($80).

(h) The delinquency fee shall not exceed twenty-five dollars ($25) or one-half of the renewal fee, whichever is greater. Any delinquent license may be restored only upon payment of all fees, including the delinquency fee.

(i) The fee for issuance of a duplicate registration, license, or certificate to replace one that is lost or destroyed, or in the event of a name change, shall not exceed twenty-five dollars ($25).

(j) The fee for each curriculum review and site evaluation for educational programs for registered dental assistants which are not accredited by a board-approved agency, the Council for Private Postsecondary and Vocational Education, or the Chancellor's office of the California Community Colleges shall not exceed one thousand four hundred dollars ($1,400).

(k) The fee for each curriculum review and site evaluation for radiation safety courses that are not accredited by a board approved agency, the Council for Private Postsecondary and Vocational Education, or the Chancellor's office of the California Community Colleges shall not exceed three hundred dollars ($300).

(*l*) No fees or charges other than those listed in subdivisions (a) through (k) above shall be levied by the board in connection with the licensure of dental auxiliaries, registered dental assistants educational program site evaluations and radiation safety course site evaluations pursuant to this chapter.

(m) Fees fixed by the board pursuant to this section shall not be subject to the approval of the Office of Administrative Law.

(n) Fees collected pursuant to this section shall be deposited in the State Dental Auxiliary Fund.

SEC. 2. Section 1741 of the Business and Professions Code is amended to read:

1741. As used in this article:

(a) "Board" means the Board of Dental Examiners of the State of California.

(b) "Committee" means the Committee on Dental Auxiliaries.

(c) "Direct supervision" means supervision of dental procedures based on instructions given by a licensed dentist, who must be physically present in the treatment facility during the performance of those procedures.

(d) "General supervision" means supervision of dental procedures based on instructions given by a licensed dentist but not requiring the physical presence of the supervising dentist during the performance of those procedures.

(e) "Dental auxiliary" means a person who may perform dental assisting or dental hygiene procedures authorized by this article. Dental auxiliary also means a registered dental hygienist in alternative practice, who may provide authorized services by prescription provided by a dentist or physician and surgeon licensed to practice in this state. "Dental auxiliary" includes all of the following:

(1) A dental assistant pursuant to Section 1750.

(2) A registered dental assistant pursuant to Section 1753.

(3) A registered dental assistant in extended functions pursuant to Section 1756.

(4) A registered dental hygienist pursuant to Section 1758.

(5) A registered dental hygienist in extended functions pursuant to Section 1761.

(6) A registered dental hygienist in alternative practice pursuant to Section 1768.

SEC. 3. Section 1750 of the Business and Professions Code is amended to read:

1750. A dental assistant is a person who may perform basic supportive dental procedures as authorized by this article under the supervision of a licensed dentist and who may perform basic supportive procedures as authorized pursuant to subdivision (b) of Section 1751 under the supervision of a registered dental hygienist in alternative practice.

SEC. 4. Section 1751 of the Business and Professions Code is amended to read:

1751. (a) By September 15, 1993, the board, upon recommendation of the committee, consistent with this article, standards of good dental practice, and the health and welfare of patients, shall adopt regulations relating to the functions that may be

performed by dental assistants under direct or general supervision, and the settings within which dental assistants may work. At least once every seven years thereafter, the board shall review the list of functions performable by dental assistants, the supervision level, and settings under which they may be performed, and shall update the regulations as needed to keep them current with the state of the practice.

(b) Under the supervision of a registered dental hygienist in alternative practice, a dental assistant may perform intraoral retraction and suctioning.

SEC. 5. Section 1764 of the Business and Professions Code is amended to read:

1764. Any person other than one who has been issued a license by the board who holds himself or herself out as a registered dental assistant, registered dental assistant in extended functions, registered dental hygienist, registered dental hygienist in extended functions, or registered dental hygienist in alternative practice, or uses any other term indicating or implying he or she is licensed by the board in the aforementioned categories, is guilty of a misdemeanor.

SEC. 6. Section 1765 is added to the Business and Professions Code, to read:

1765. The board shall seek to obtain an injunction against any dental hygienist who provides services in alternative practice pursuant to Sections 1768 and 1770 if the board has reasonable cause to believe that the services are being provided to any patient who has not received a prescription for those services from a dentist or physician and surgeon licensed to practice in this state.

SEC. 7. Section 1768 is added to the Business and Professions Code, to read:

1768. (a) The board shall license as a registered dental hygienist in alternative practice a person who demonstrates satisfactory performance on an examination required by the board and, subject to Sections 1758, 1759, and 1760, who meets either of the following requirements which have prepared the person to practice dental hygiene in an alternative setting:

(1) The person holds a current California license as a dental hygienist and meets the following requirements:

(A) The person has been engaged in clinical practice as a dental hygienist for a minimum of 2,000 hours during the immediately preceding 36 months.

(B) The person has successfully completed a bachelor's degree or its equivalent from a college or institution of higher education that is accredited by a national agency recognized by the Council on Postsecondary Accreditation or the United States Department of Education, and a minimum of 150 hours of additional educational requirements, as prescribed by the board by regulation, that are consistent with good dental and dental hygiene practice, including, but not necessarily limited to, dental hygiene technique and theory

including gerontology and medical emergencies, and business administration and practice management.

(2) A person who has received a letter of acceptance into the employment utilization phase of the Health Manpower Pilot Project No. 155 established by the Office of Statewide Health Planning and Development pursuant to Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 of the Health and Safety Code.

(b) By January 1, 1999, the board, upon recommendations of the committee that shall be made no later than February 15, 1998, consistent with the standards of good dental practice, shall adopt regulations in accordance with Section 1748 prescribing all of the following:

(1) The content for the 150 hours of coursework to be successfully completed for licensure of a registered dental hygienist in alternative practice.

(2) The functions requiring general supervision that may be performed by a registered dental hygienist in alternative practice as an employee of a dentist.

(3) The functions that may be performed independently and without the supervision of a dentist by a registered dental hygienist in alternative practice shall include, but need not be limited to, root planing and oral prophylaxis.

(4) Services authorized pursuant to paragraphs (2) and (3) may be performed by prescription.

(c) The Director of Consumer Affairs shall review the regulations adopted by the board in accordance with Section 313.1.

(d) If the board does not adopt regulations in accordance with subdivision (b), or if the regulations are not approved in accordance with Section 313.1, the coursework and duties for alternative dental hygiene practice that were established under the auspices of the Health Manpower Pilot Project shall govern a registered dental hygienist in alternative practice for purposes of this section and Section 1770 until 30 days following the date on which the board adopts regulations in accordance with subdivision (b) and the regulations are adopted in accordance with Section 313.1, at which time the regulations adopted by the board shall take effect. This subdivision shall not apply to either of the following, which shall be effective regardless of whether the board adopts the regulations:

(1) The limitation on settings, specified in subdivision (b) of Section 1770, in which a registered dental hygienist in alternative practice may practice.

(2) The requirements specified in subdivision (h) of Section 1770 of an examination, diagnosis, and prescription.

(e) A person licensed as a registered dental hygienist who has completed the prescribed classes through the Health Manpower Pilot Project (HMPP) and who has established an independent practice under the HMPP by June 30, 1997, shall be deemed to have

satisfied the licensing requirements under Section 1768, and shall be authorized to continue to operate the practice he or she presently operates, so long as he or she follows the requirements for prescription and functions as specified in this section and Section 1770, with the exception of subdivision (e) of Section 1770, and as long as he or she continues to personally practice and operate the practice or until such time that he or she sells the practice to a licensed dentist.

(f) The Health Manpower Pilot Project 155 shall cease to operate on the effective date of this section.

SEC. 8. Section 1770 is added to the Business and Professions Code, to read:

1770. (a) A registered dental hygienist in alternative practice may practice, pursuant to Section 1768, as an employee of a dentist or of another registered dental hygienist in alternative practice, or as an independent contractor, or as a sole proprietor of an alternative dental hygiene practice.

(b) A registered dental hygienist in alternative practice may perform the duties authorized pursuant to Section 1768 in the following settings:

(1) Residences of the homebound.

(2) Schools.

(3) Residential facilities and other institutions.

(4) Dental health professional shortage areas, as certified by the Office of Statewide Health Planning and Development in accordance with existing office guidelines.

(c) A registered dental hygienist in alternative practice shall not do any of the following:

(1) Infer, purport, advertise, or imply that he or she is in any way able to provide dental services or make any type of dental health diagnosis beyond evaluating a patient's dental hygiene status, providing a dental hygiene treatment plan, and providing the associated dental hygiene services.

(2) Hire a registered dental hygienist to provide direct patient services other than a registered dental hygienist in alternative practice.

(d) A registered dental hygienist in alternative practice may submit or allow to be submitted any insurance or third-party claims for patient services performed as authorized pursuant to this article.

(e) A registered dental hygienist in alternative practice may hire other registered dental hygienists in alternative practice to assist in his or her practice.

(f) A registered dental hygienist in alternative practice may hire and supervise dental assistants performing functions specified in subdivision (b) of Section 1751.

(g) A registered dental hygienist in alternative practice shall provide to the board documentation of an existing relationship with at least one dentist for referral, consultation, and emergency services.

(h) A registered dental hygienist in alternative practice may perform dental hygiene services for a patient who presents to the registered hygienist in alternative practice a written prescription for dental hygiene services issued by a dentist or physician and surgeon licensed to practice in this state who has performed a physical examination and a diagnosis of the patient prior to a prescription being provided. The prescription shall be valid for a time period based on the dentist's or physician and surgeon's professional judgment, but not to exceed 15 months from the date that it was issued.

SEC. 9. Section 14132 of the Welfare and Institutions Code is amended to read:

14132. The following is the schedule of benefits under this chapter:

(a) Outpatient services are covered as follows:

Physician, hospital or clinic outpatient, surgical center, respiratory care, optometric, chiropractic, psychology, podiatric, occupational therapy, physical therapy, speech therapy, audiology, acupuncture to the extent federal matching funds are provided for acupuncture, and services of persons rendering treatment by prayer or healing by spiritual means in the practice of any church or religious denomination insofar as these can be encompassed by federal participation under an approved plan, subject to utilization controls.

(b) Inpatient hospital services, including, but not limited to, physician and podiatric services, physical therapy and occupational therapy, are covered subject to utilization controls.

(c) Nursing facility services, subacute care services, and services provided by any category of intermediate care facility for the developmentally disabled, including podiatry, physician, nurse practitioner services, and prescribed drugs, as described in subdivision (d), are covered subject to utilization controls. Respiratory care, physical therapy, occupational therapy, speech therapy, and audiology services for patients in nursing facilities and any category of intermediate care facility for the developmentally disabled are covered subject to utilization controls.

(d) Purchase of prescribed drugs is covered subject to the Medi-Cal List of Contract Drugs and utilization controls.

(e) Outpatient dialysis services and home hemodialysis services, including physician services, medical supplies, drugs and equipment required for dialysis, are covered, subject to utilization controls.

(f) Anesthesiologist services when provided as part of an outpatient medical procedure, nurse anesthetists services when rendered in an inpatient or outpatient setting under conditions set forth by the director, outpatient laboratory services, and X-ray services are covered, subject to utilization controls. Nothing in this subdivision shall be construed to require prior authorization for anesthesiologist services provided as part of an outpatient medical procedure or for portable X-ray services in a nursing facility or any

category of intermediate care facility for the developmentally disabled.

(g) Blood and blood derivatives are covered.

(h) (1) Emergency and essential diagnostic and restorative dental services, except for orthodontic, fixed bridgework, and partial dentures that are not necessary for balance of a complete artificial denture, are covered, subject to utilization controls. The utilization controls shall allow emergency and essential diagnostic and restorative dental services and prostheses that are necessary to prevent a significant disability or to replace previously furnished prostheses which are lost or destroyed due to circumstances beyond the beneficiary's control. The department's utilization controls shall not require X-rays as a condition of reimbursement for fillings for children under 18 years of age. Notwithstanding the foregoing, the director may by regulation provide for certain fixed artificial dentures necessary for obtaining employment or for medical conditions which preclude the use of removable dental prostheses, and for orthodontic services in cleft palate deformities administered by the department's California Children Services Program.

(2) For persons 21 years of age or older, the services specified in paragraph (1) shall be provided subject to the following conditions:

(A) Periodontal treatment is not a benefit.

(B) Endodontic therapy is not a benefit except for vital pulpotomy.

(C) Laboratory processed crowns are not a benefit.

(D) Removable prosthetics shall be a benefit only for patients as a requirement for employment.

(E) The director may, by regulation, provide for the provision of fixed artificial dentures that are necessary for medical conditions that preclude the use of removable dental prostheses.

(F) Notwithstanding the conditions specified in subparagraphs (A) to (E), inclusive, the department may approve services for persons with special medical disorders subject to utilization review.

(3) Paragraph (2) shall become inoperative July 1, 1995.

(i) Medical transportation is covered, subject to utilization controls.

(j) Home health care services are covered, subject to utilization controls.

(k) Prosthetic and orthotic devices and eyeglasses are covered, subject to utilization controls. Utilization controls shall allow replacement of prosthetic and orthotic devices and eyeglasses necessary because of loss or destruction due to circumstances beyond the beneficiary's control. Frame styles for eyeglasses replaced pursuant to this subdivision shall not change more than once every two years, unless the department so directs.

Orthopedic and conventional shoes are covered when provided by a prosthetic and orthotic supplier on the prescription of a physician and when at least one of the shoes will be attached to a prosthesis or

brace, subject to utilization controls. Modification of stock conventional or orthopedic shoes when medically indicated, is covered subject to utilization controls. When there is a clearly established medical need that cannot be satisfied by the modification of stock conventional or orthopedic shoes, custom-made orthopedic shoes are covered, subject to utilization controls.

(*l*) Hearing aids are covered, subject to utilization controls. Utilization controls shall allow replacement of hearing aids necessary because of loss or destruction due to circumstances beyond the beneficiary's control.

(m) Durable medical equipment and medical supplies are covered, subject to utilization controls. The utilization controls shall allow the replacement of durable medical equipment and medical supplies when necessary because of loss or destruction due to circumstances beyond the beneficiary's control.

(n) Family planning services are covered, subject to utilization controls.

(o) Inpatient intensive rehabilitation hospital services, including respiratory rehabilitation services, in a general acute care hospital are covered, subject to utilization controls, when either of the following criteria are met:

(1) A patient with a permanent disability or severe impairment requires an inpatient intensive rehabilitation hospital program as described in Section 14064 to develop function beyond the limited amount that would occur in the normal course of recovery.

(2) A patient with a chronic or progressive disease requires an inpatient intensive rehabilitation hospital program as described in Section 14064 to maintain the patient's present functional level as long as possible.

(p) Adult day health care is covered in accordance with Chapter 8.7 (commencing with Section 14520).

(q) (1) Application of fluoride, or other appropriate fluoride treatment as defined by the department, other prophylaxis treatment for children 17 years of age and under, are covered.

(2) All dental hygiene services provided by a registered dental hygienist in alternative practice pursuant to Sections 1768 and 1770 of the Business and Professions Code may be covered as long as they are within the scope of Denti-Cal benefits and they are necessary services provided by a registered dental hygienist in alternative practice.

(r) (1) Paramedic services performed by a city, county, or special district, or pursuant to a contract with a city, county, or special district, and pursuant to a program established under Article 3 (commencing with Section 1480) of Chapter 2.5 of Division 2 of the Health and Safety Code by a paramedic certified pursuant to that article, and consisting of defibrillation and those services specified in subdivision (3) of Section 1482 of the article.

(2) All providers enrolled under this subdivision shall satisfy all applicable statutory and regulatory requirements for becoming a Medi-Cal provider.

(3) This subdivision shall be implemented only to the extent funding is available under Section 14106.6.

(s) In-home medical care services are covered when medically appropriate and subject to utilization controls, for beneficiaries who would otherwise require care for an extended period of time in an acute care hospital at a cost higher than in-home medical care services. The director shall have the authority under this section to contract with organizations qualified to provide in-home medical care services to those persons. These services may be provided to patients placed in shared or congregate living arrangements, if a home setting is not medically appropriate or available to the beneficiary. As used in this section, "in-home medical care service" includes utility bills directly attributable to continuous, 24-hour operation of life-sustaining medical equipment, to the extent that federal financial participation is available.

As used in this subdivision, in-home medical care services, include, but are not limited to:

(1) Level of care and cost of care evaluations.

(2) Expenses, directly attributable to home care activities, for materials.

(3) Physician fees for home visits.

(4) Expenses directly attributable to home care activities for shelter and modification to shelter.

(5) Expenses directly attributable to additional costs of special diets, including tube feeding.

(6) Medically related personal services.

(7) Home nursing education.

(8) Emergency maintenance repair.

(9) Home health agency personnel benefits which permit coverage of care during periods when regular personnel are on vacation or using sick leave.

(10) All services needed to maintain antiseptic conditions at stoma or shunt sites on the body.

(11) Emergency and nonemergency medical transportation.

(12) Medical supplies.

(13) Medical equipment, including, but not limited to, scales, gurneys, and equipment racks suitable for paralyzed patients.

(14) Utility use directly attributable to the requirements of home care activities which are in addition to normal utility use.

(15) Special drugs and medications.

(16) Home health agency supervision of visiting staff which is medically necessary, but not included in the home health agency rate.

(17) Therapy services.

(18) Household appliances and household utensil costs directly attributable to home care activities.

(19) Modification of medical equipment for home use.

(20) Training and orientation for use of life support systems, including, but not limited to, support of respiratory functions.

(21) Respiratory care practitioner services as defined in Sections 3702 and 3703 of the Business and Professions Code, subject to prescription by a physician and surgeon.

Beneficiaries receiving in-home medical care services are entitled to the full range of services within the Medi-Cal scope of benefits as defined by this section, subject to medical necessity and applicable utilization control. Services provided pursuant to this subdivision, which are not otherwise included in the Medi-Cal schedule of benefits, shall be available only to the extent that federal financial participation for these services is available in accordance with a home- and community-based services waiver.

(t) Home- and community-based services approved by the United States Department of Health and Human Services may be covered to the extent that federal financial participation is available for those services under waivers granted in accordance with Section 1396n of Title 42 of the United States Code. The director may seek waivers for any or all home- and community-based services approvable under Section 1396n of Title 42 of the United States Code. Coverage for those services shall be limited by the terms, conditions, and duration of the federal waivers.

The department shall submit a report, as provided in Section 28 of the 1982 Budget Act, 30 days prior to providing these services as Medi-Cal benefits. The report shall be submitted to the Joint Legislative Budget Committee and the fiscal committees and shall address the cost effectiveness of services provided pursuant to this subdivision.

(u) Comprehensive perinatal services, as provided through an agreement with a health care provider designated in Section 14134.5 and meeting the standards developed by the department pursuant to Section 14134.5, subject to utilization controls.

The department shall seek any federal waivers necessary to implement the provisions of this subdivision. The provisions for which appropriate federal waivers cannot be obtained shall not be implemented. Provisions for which waivers are obtained or for which waivers are not required shall be implemented notwithstanding any inability to obtain federal waivers for the other provisions. No provision of this subdivision shall be implemented unless matching funds from Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code are available.

(v) Early and periodic screening, diagnosis, and treatment for any individual under 21 years of age is covered, consistent with the requirements of Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

(w) Hospice service which is Medicare-certified hospice service is covered, subject to utilization controls. Coverage shall be available only to the extent that no additional net program costs are incurred.

(x) When a claim for treatment provided to a beneficiary includes both services which are authorized and reimbursable under this chapter, and services which are not reimbursable under this chapter, that portion of the claim for the treatment and services authorized and reimbursable under this chapter shall be payable.

(y) Home- and community-based services approved by the United States Department of Health and Human Services for beneficiaries with a diagnosis of AIDS or ARC, who require intermediate care or a higher level of care.

Services provided pursuant to a waiver obtained from the Secretary of the United States Department of Health and Human Services pursuant to this subdivision, and which are not otherwise included in the Medi-Cal schedule of benefits, shall be available only to the extent that federal financial participation for these services is available in accordance with the waiver, and subject to the terms, conditions, and duration of the waiver. These services shall be provided to individual beneficiaries in accordance with the client's needs as identified in the plan of care, and subject to medical necessity and applicable utilization control.

The director may under this section contract with organizations qualified to provide, directly or by subcontract, services provided for in this subdivision to eligible beneficiaries. Contracts or agreements entered into pursuant to this division shall not be subject to the Public Contract Code.

(z) Respiratory care when provided in organized health care systems as defined in Section 3701 of the Business and Professions Code, and as an in-home medical service as outlined in subdivision (s).

SEC. 10. This act shall become operative only if SB 1014 of the 1997–98 Regular Session of the Legislature is enacted and takes effect on or before January 1, 1998.

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.

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CHAPTER 754

An act to add Sections 138.4 and 109278 to the Health and Safety Code, relating to cancer.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 138.4 is added to the Health and Safety Code, to read:

138.4. (a) The State Department of Health Services shall place priority on providing information to consumers, patients, and health care providers regarding women's gynecological cancers, including, signs and symptoms, risk factors, the benefits of early detection through appropriate diagnostic testing, and treatment options.

(b) The information may include, but is not limited to, the following elements:

(1) Educational and informational materials in print, audio, video, electronic, or other media.

(2) Public service announcements and advertisements.

(c) (1) The department may produce or contract with others to develop the materials described in this section as the director deems appropriate, or may survey available publications from, among other sources, the National Cancer Institute and the American Cancer Society, and may collect and formulate a distribution plan and disseminate these publications according to the plan. These materials may be made available to the public free of charge and may include distribution through the Medical Board of California, as well as through other sources according to the distribution plan.

(2) The department may require, as it deems appropriate, health care providers to make these materials available to patients.

(d) In exercising the powers under this section, the office shall consult with appropriate health care professionals and providers, consumers, and patients, or organizations representing them.

(e) The department may appoint a Women's Gynecological Cancer Information Advisory Council which may include representation from health care professionals and providers, consumers, patients, and other appropriate interests. Members of the council shall receive no compensation for their services, but shall be allowed their actual and necessary expenses incurred in the performance of their duties.

(f) The department's duties pursuant to this section are contingent upon the department receiving funds appropriated for this purpose.

(g) The department may adopt any regulations necessary and appropriate for the implementation of this section.

SEC. 2. Section 109278 is added to the Health and Safety Code, to read:

109278. (a) The medical care provider primarily responsible for providing to a patient an annual gynecological examination shall provide to that patient during the annual examination a standardized summary in layperson's language and in a language understood by the patient containing a description of the symptoms and appropriate methods of diagnoses for gynecological cancers. Use of existing publications developed by nationally recognized cancer organizations is not precluded by this section.

(b) For the purposes of this section, "medical care provider" means a health care professional licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code or pursuant to an initiative act referred to in that division providing medical care within his or her lawful scope of practice.

CHAPTER 755

An act to add Sections 104180 and 104182 to the Health and Safety Code, relating to cancer, and making an appropriation therefor.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. The Legislature finds and declares that decades after the war on cancer was declared, it remains an insidious killer of Californians. Simultaneously, cancer absorbs millions of dollars from California's economy through health care costs, and takes an horrendous toll on the personal lives of citizens.

SEC. 2. Section 104180 is added to the Health and Safety Code, to be contained in Article 2 (commencing with Section 104175) of Chapter 1 of Part 1 of Division 103, to read:

104180. The Cancer Research Fund is hereby established in the State Treasury. Moneys in the fund shall be available for expenditure by the department. It is the intent of the Legislature that, after the initial appropriation made pursuant to Assembly Bill 1554 of the 1997–98 Regular Session, the fund be enhanced by annual allocations determined in subsequent budget acts.

SEC. 3. Section 104182 is added to the Health and Safety Code, to be contained in Article 2 (commencing with Section 104175) of Chapter 2 of Part 1 of Division 103, to read:

104182. (a) The Cancer Research Council is hereby established, to consist of 15 members appointed by the Director of Health Services representing a range of expertise and experience, and the chief of the California Cancer Registry as an ex officio, nonvoting

member. The voting members shall be appointed by February 15, 1998, as follows:

(1) Nine members from persons recommended by relevant organizations, as follows:

(A) One member drawn from a cancer survivor group or cancer-related advocacy group.

(B) Five members drawn from the ranks of scientists or clinicians, two from public universities or research organizations, and three from private universities or research organizations. The scientists shall have expertise in one or more of the various fields of cancer research.

(C) One member who is a practicing cancer medical specialist from a health organization with a commitment to cancer research and control.

(D) Two members from private industry with an interest in cancer research and control, including, but not limited to, entrepreneurs or persons from the science or high technology industry.

(2) Three members nominated by the Senate Committee on Rules as follows:

(A) One member drawn from a cancer survivor group or cancer-related advocacy group.

(B) One member drawn from a health organization.

(C) One member drawn from private industry with an interest in cancer research or control.

(3) Three members nominated by the Speaker of the Assembly as follows:

(A) One member drawn from a cancer survivor group or cancer-related advocacy group.

(B) One member drawn from a health organization.

(C) One scientist or clinician who has expertise in one or more of the various fields of cancer research.

(b) It is the intent of the Legislature that the council contain the proportional representation of appointees described in subdivision (a) when the council approves the funding of research grants, and that vacancies affecting the proportional representation be filled before grants are approved, and within 45 days of the occurrence of a vacancy.

(c) Members shall serve without compensation, but may receive reimbursement for travel and other necessary expenses actually incurred in the performance of their official duties.

(d) All appointments shall be for a term of four years, except that, for purposes of the initial appointments, the Director of Health Services shall appoint five members to four-year terms, five members to three-year terms, and five members to two-year terms. Each of those groups of five members shall include three members appointed under paragraph (1) of subdivision (a), one member appointed

under paragraph (2) of that subdivision, and one member appointed under paragraph (3) of that subdivision.

SEC. 4. The sum of two million dollars ($2,000,000) is hereby appropriated from the General Fund to the Cancer Research Fund established in the State Treasury pursuant to Section 104180 of the Health and Safety Code to be expended for the purpose of cancer research, as defined in paragraph (1) of subdivision (c) of Section 104181 of the Health and Safety Code. It is the intent of the Legislature to appropriate twenty-five million dollars ($25,000,000) for these purposes in the 1998–99 fiscal year, subject to the availability of funds.

SEC. 5. Sections 1 to 4, inclusive, of this bill shall become operative only if SB 273 of the 1997–98 Regular Session is enacted and takes effect on or before January 1, 1998.

CHAPTER 756

An act to add Article 2 (commencing with Section 104175) to Chapter 2 of Part 1 of Division 103 of the Health and Safety Code, relating to cancer.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Article 2 (commencing with Section 104175) is added to Chapter 2 of Part 1 of Division 103 of the Health and Safety Code, to read:

Article 2. The Cancer Research Act of 1997

104175. The Legislature finds and declares that decades after the war on cancer was declared, it remains an insidious killer of Californians. Simultaneously, cancer absorbs millions of dollars from California's economy through health care costs, and takes an horrendous toll on the personal lives of citizens.

104181. (a) The moneys in the Cancer Research Fund, established pursuant to Section 104180, shall be expended for the purpose of cancer research.

(b) The State Department of Health Services shall establish and administer the Cancer Research Program created by this article in a manner that will ensure the participation of both private sector and public research organizations. The State Department of Health Services may contract with nonprofit organizations, foundations, or public entities to administer the Cancer Research Program created by this article. A nonprofit organization shall be established under

Section 501(c)(3) of the Internal Revenue Code for the purpose of conducting public health research. A nonprofit organization, foundation, or public entity shall have prior experience administering research programs offering comprehensive grant and contract opportunities for research concerning public health and disease-related projects, with substantial participation by private entities and public research organizations. In addition, a nonprofit organization, foundation, or public entity shall have experience in seeking, combining, and maximizing private funding to supplement public funding of projects. It is the intent of the Legislature that this program incorporate the principles and organizational elements set forth in this article, including, but not limited to, a research program office with a director and other essential staff, a cancer research council, and a research peer review panel.

(c) For the purposes of this article, all of the following shall apply:

(1) "Cancer research" is research with respect to the cause and prevention, cure, diagnosis, and treatment of cancer, including, but not limited to, intramural and extramural research in the fields of biomedical science and engineering, economics, epidemiology, diet and lifestyle, public health, and technology development and translation, with emphasis on noninvasive treatments.

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

(3) "Grantee" means any qualifying public, private, or nonprofit agency or individual, including, but not limited to, colleges, universities, hospitals, laboratories, research institutions, local health departments, voluntary health agencies, cancer registries, health maintenance organizations, publicly traded or private corporations, students, fellows, entrepreneurs, and individuals conducting research in this state. A grantee may also be a corporation that is headquartered in California and that will conduct a substantial majority of the grant's research in this state.

(4) "Indirect costs" includes use allowance for research facilities, heating, lighting, library services, health and safety services, project administration, and building maintenance, as defined by federal cost accounting guidelines for federally sponsored research.

(5) "Program" means the Cancer Research Program.

(6) "Council" means the Cancer Research Council established pursuant to Section 104182.

104185. (a) This program shall incorporate the principles and organizational elements set forth in this article, including, but not limited to, a research program office with a director and other essential staff, a research council, and a research peer review panel. No more than 10 percent of the annual allocation for this program, up to a maximum of five hundred thousand dollars ($500,000), shall be expended annually for the total administrative costs of the program. Administrative costs shall be kept to a strict minimum.

(b) The program shall be administered pursuant to the following principles:

(1) The department shall work in close collaboration with the council and seek the advice of the council before taking an action different from an action recommended by the council.

(2) The council shall participate in the development of the strategic objectives and priorities of the program based on the intent of this article and advise on what and how many research grants should be funded based on the research priorities that are established for the program and the technical merits of the proposals as determined by the peer review panels.

(3) The research priorities shall reflect, and the program shall fund, innovative and creative research, with a special emphasis on research that complements, rather than duplicates, the research funded by the federal government and other entities.

(4) All research funds shall be awarded on the basis of the priorities established for the program, statutorily or by the council, and the scientific merit and clinical applicability of the proposed research, as determined by an open, competitive peer review process that ensures objectivity, consistency, and high quality. All investigators, regardless of affiliation, shall have equal access and opportunity to compete for program funds.

(5) The peer review process for the selection of research grants awarded under this program shall be generally modeled on that used by the National Institute of Health in its grantmaking process, including the appeals process, but shall reflect in composition the creativity and diversity called for in this article and in the research priorities established in this article and by the council.

(6) A grantee shall be awarded grants for both direct and indirect costs of conducting the sponsored research consistent with those federal guidelines governing all federal research grants and contracts. All intellectual property assets developed under this program shall be treated in accordance with state and federal law.

(7) In establishing research priorities, the council shall consider a broad range of cross-disciplinary cancer research, as defined in paragraph (1) of subdivision (c) of Section 104181, including, but not limited to, research into the cause and prevention, cure, diagnosis, and treatment of cancer, emphasizing gender-specific cancers, based on magnitude of incidence and mortality, that have not previously received state funding.

104187. The State Department of Health Services shall do all of the following:

(a) Provide overall coordination of the program.

(b) Provide staff assistance to the program and council.

(c) Develop administrative procedures relative to the solicitation, review, and awarding of grants to ensure an impartial, high quality peer review system.

(d) Recruit and supervise research review panels. The membership of these panels shall vary depending on the subject matter of proposals and review requirements, and shall draw on the most qualified individuals. The work of the review panels shall be administered pursuant to policies and procedures established for the implementation of the program. In order to avoid conflicts of interest and to ensure access to qualified reviewers, the department may utilize reviewers not only from California but also from outside the state. When serving on review panels, institutions, corporations, or individuals who have submitted grant applications for funding by this program shall be governed by conflict-of-interest provisions consistent with Section 52h.5 of Title 42 of the Code of Federal Regulations governing scientific review of research grant applications, and any applicable conflict-of-interest provisions in state law. Any appointed member of the Cancer Research Council shall be ineligible to apply for or receive funding for cancer research from the Cancer Research Program during his or her term of service on the council, and for one cycle immediately following his or her term of service on the council, if the council member helped plan that subsequent cycle.

(e) Provide for periodic program evaluation to ensure that research funded is consistent with program goals.

(f) Disseminate grant moneys within 60 days of notification of the award and maintain a system of financial reporting and accountability.

(g) Provide for the systematic dissemination of research results to the public and the health care community, including work to produce public service advertising on screening and research results, and provide for a mechanism to disseminate the most current research findings in the areas of cause and prevention, cure, diagnosis, and treatment of cancer, in order that these findings may be applied to the planning, implementation, and evaluation of any cancer-related programs of the department.

(h) Develop policies and procedures to facilitate the translation of research results into commercial, alternate technological, and other applications wherever appropriate and consistent with state and federal law.

(i) Transmit, on or before December 31, 1998, and annually on or before each December 31 thereafter, a report to the Legislature on grants made, grants in progress, program accomplishments, and future program directions. Each report shall include, but not be limited to, all of the following information:

(A) The number and dollar amounts of research grants, including the amount allocated to indirect costs.

(B) The subject of research grants.

(C) The relationship between federal and state funding for cancer research.

(D) The relationship between each project and the overall strategy of the research program.

(E) A summary of research findings, including discussion of promising new areas.

(F) The corporations, institutions, and campuses receiving grant awards.

104189. The responsibilities of the council shall include, but not be limited to, all of the following:

(a) Development and review of the strategic objectives and research priorities of the program.

(b) Delineation of resource allocation across the various priorities established for the program.

(c) Participation in periodic program and financial review, including the report transmitted pursuant to subdivision (i) of Section 104187.

(d) Development and review of guidelines to ensure fairness, neutrality, and adherence to the principles of merit and quality in the conduct of the program.

(e) Development of appropriate linkages to nonacademic entities, including, but not limited to, voluntary organizations, health care delivery systems, industry, government agencies, research entrepreneurs, and public officials.

(f) Development and review of criteria and standards for granting awards.

(g) Oversight and review of the request for applications (RFA).

(h) Review of research review panel reports and recommendations for grant awards.

(i) Make recommendations relating to the grants that are to be awarded.

(j) Development and review of oversight mechanisms for the dissemination of research results.

(k) Development and review of policies and liaison programs to facilitate the translation of research results into commercial, alternate technological, or other applications wherever appropriate.

(*l*) Establishment of its own internal rules of operation.

(m) Participation in the identification and recruitment of scientists with relevant expertise for possible participation in a peer review panel. The council may propose to assign a member of the council to sit as a nonvoting member of the peer review panels.

SEC. 2. Section 1 of this bill shall become operative only if Assembly Bill 1554 of the 1997–98 Regular Session is enacted and takes effect on or before January 1, 1998.

CHAPTER 757

An act to amend, add, and repeal Sections 1775, 1776, and 1813 of the Labor Code, relating to public works.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 1775 of the Labor Code is amended to read:

1775. The contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars ($50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by him or her or by any subcontractor under him or her. The amount of this penalty shall be determined by the Labor Commissioner and shall be based on consideration of the contractor's mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages, or the previous record of the contractor in meeting his or her prevailing wage obligations, or a contractor's willful failure to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the contractor had knowledge of his or her obligations under this part. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

To the extent that there is insufficient money due a contractor to cover all penalties and amounts due in accordance with this section, or in accordance with Section 1813, and in all cases where the contract does not provide for a money payment by the awarding body to the contractor, the awarding body shall notify the Division of Labor Standards Enforcement of the violation and the Division of Labor Standards Enforcement, if necessary with the assistance of the awarding body, may maintain an action in any court of competent jurisdiction to recover the penalties and the amounts due provided in this section. This action shall be commenced not later than 90 days after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 90 days after acceptance of the public work, whichever last occurs. No issue other than that of the liability of the contractor for the penalties allegedly forfeited and amounts due shall be determined in the action, and the

burden shall be upon the contractor to establish that the penalties and amounts demanded in the action are not due.

Out of any money withheld, recovered, or both, there shall first be paid the amount due each worker, and if insufficient funds are withheld, recovered, or both, to pay each worker in full, the money shall be prorated among all workers.

This section shall become operative on January 1, 2003.

SEC. 2. Section 1775 is added to the Labor Code, to read:

1775. (a) The contractor and any subcontractor under him or her shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars ($50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by him or her or, except as provided in subdivision (b), by any subcontractor under him or her. The amount of this penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the contractor or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the contractor in meeting his or her prevailing wage obligations, or the willful failure by the contractor or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the contractor or subcontractor had knowledge of his or her obligations under this part. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

(3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

(4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.

(c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages. If the Division of Labor Standards Enforcement determines that employees of a subcontractor were not paid the general prevailing rate of per diem wages and if the body awarding the contract under which the employees performed work did not retain sufficient money under the contract to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the contractor shall withhold an amount of moneys due the subcontractor sufficient to pay those employees the general prevailing rate of per diem wages if requested by the Division of Labor Standards Enforcement. The contractor shall pay any money retained from and owed to a subcontractor upon receipt of notification by the Division of Labor Standards Enforcement that the wage complaint has been resolved. If notice of the resolution of the wage complaint has not been received by the contractor within 180 days of the filing of a valid notice of completion or acceptance of the public works project, whichever occurs later, the contractor shall pay all moneys retained from the subcontractor to the awarding body. The moneys shall be retained by the awarding body pending the final decision of an enforcement action, and be forwarded to the Labor Commissioner for disbursement pursuant to subdivision (d) if the subcontractor does not prevail in the action. Wages for workers who cannot be located after a diligent search by the Labor Commissioner shall be deposited in the Industrial Relations Unpaid Wage Fund pursuant to subdivision (c) of Section 96.7. Penalties shall be paid into the General Fund.

If the subcontractor prevails in the enforcement action, the awarding body shall release any funds retained pursuant to this subdivision to the contractor within 10 working days from the date of the final decision of the court.

(d) To the extent that there is insufficient money due a contractor to cover all penalties and amounts due in accordance with this section or Section 1813, and in all cases where the contract does not provide

for a money payment by the awarding body to the contractor, the awarding body shall notify the Division of Labor Standards Enforcement of the violation and the division, if necessary with the assistance of the awarding body, may maintain an action in any court of competent jurisdiction to recover the penalties and the amounts due provided in this section. This action shall be commenced not later than 180 days after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 180 days after acceptance of the public work, whichever last occurs. No issue other than that of the liability of the contractor and subcontractor for the penalties allegedly forfeited and amounts due shall be determined in the action, and the burden shall be upon the contractor and subcontractor to establish that the penalties and amounts demanded in the action are not due. The contractor and subcontractor shall be jointly and severally liable in an enforcement action for any wages due. Following entry of a judgment for joint and several liability, the division shall first exhaust all reasonable remedies to collect the amount due from the subcontractor before pursuing the claim for wages against the contractor. From the amount collected from the subcontractor, the wage claim shall be satisfied prior to the amount being applied to penalties.

Out of any money withheld, recovered, or both, there shall first be paid the amount due each worker, and if insufficient funds are withheld, recovered, or both, to pay each worker in full, the money shall be prorated among all workers.

(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. 3. Section 1776 of the Labor Code is amended to read:

1776. (a) Each contractor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

(d) Each contractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in a manner so as to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or performing the contract shall not be marked or obliterated.

(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects the contractor must comply with this section. In the event that the contractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars ($25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

(h) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. These stipulations shall fix the responsibility for compliance with this section on the prime contractor.

(i) The director shall adopt rules consistent with the California Public Records Act, (Chapter 3.5 (commencing with Section 6250), Division 7, Title 1, Government Code) and the Information Practices Act of 1977, (Title 1.8 (commencing with Section 1798), Part 4,

Division 3, Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

This section shall become operative January 1, 2003.

SEC. 4. Section 1776 is added to the Labor Code, to read:

1776. (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the

awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in a manner so as to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated.

(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The contractor or subcontractor shall have 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars ($25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(h) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(i) The director shall adopt rules consistent with the California Public Records Act, (Chapter 3.5 (commencing with Section 6250), Division 7, Title 1, Government Code) and the Information Practices Act of 1977, (Title 1.8 (commencing with Section 1798), Part 4, Division 3, Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

(j) 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. 5. Section 1813 of the Labor Code is amended to read:

1813. The contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars ($25) for each workman employed in the execution of the contract by the contractor or by any subcontractor for each calendar day during which such workman is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted therein a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall

report them to the officer of the state or political subdivision who is authorized to pay the contractor money due him under the contract.

This section shall become operative January 1, 2003.

SEC. 6. Section 1813 is added to the Labor Code, to read:

1813. The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars ($25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

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. 7. All contracts that are governed by Section 1775, 1776, and 1813 of the Labor Code shall comply with the provisions of Chapter 1 (commencing with Section 1720 of Part of Division 2 of the Labor Code that are applicable to contracts for public works projects.

SEC. 8. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

CHAPTER 758

An act to amend Sections 101, 485, 486, 489, 810, 2499.5, 2530.2, 2530.5, 2530.6, 2531, 2531.05, 2531.1, 2531.2, 2531.3, 2531.4, 2531.6, 2531.7, 2531.8, 2531.9, 2531.95, 2532.1, 2532.2, 2532.4, 2533.4, 2534, 2534.1, 2534.2, 2535, 2535.2, 2535.4, 2536, 2539, 2760.1, 2902, 2928, 2929, 2933, 2940, 2941, 2948, 2971, 2980, 2984, 3325, 3328, 3362, 3401, 5029, 5107, 7330, 7335, 7337, 7340, 7404, 7414, 7415, 7417, 7423, and 7860 of, to add Sections 144 and 2531.75 to, to repeal Sections 6529, 6548, 6560,

6625, 6630, 6632, 6633, 6634, 6635, 6635.2, 6636, 7302, 7311, 7312, 7314, 7314.1, 7314.2, 7320, 7322, 7373, 7384, 7390, 7391, 7392, 7393, 7394, 7395, 7412, 7420, 7427, 7431, 7436, 7437, 7437.3, and 7444 of, and to repeal and add Section 2531.5 of, the Business and Professions Code, and to amend Section 13401.5 of the Corporations Code, relating to professions and vocations.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 101 of the Business and Professions Code is amended to read:

101. The department is composed of:

(a) The Board of Dental Examiners of California.

(b) The Medical Board of California.

(c) The State Board of Optometry.

(d) The California State Board of Pharmacy.

(e) The Veterinary Medical Board.

(f) The Board of Accountancy.

(g) The California State Board of Architectural Examiners.

(h) The State Board of Barbering and Cosmetology.

(i) The State Board of Registration for Professional Engineers and Land Surveyors.

(j) The Contractors' State License Board.

(k) The State Board of Funeral Directors and Embalmers.

(*l*) The Structural Pest Control Board.

(m) The Bureau of Home Furnishings and Thermal Insulation.

(n) The Board of Registered Nursing.

(o) The Board of Behavioral Science Examiners.

(p) The State Athletic Commission.

(q) The Cemetery Board.

(r) The State Board of Guide Dogs for the Blind.

(s) The Bureau of Security and Investigative Services.

(t) The Court Reporters Board of California.

(u) The Board of Vocational Nurse and Psychiatric Technician Examiners of the State of California.

(v) The California State Board of Landscape Architects.

(w) The Bureau of Electronic and Appliance Repair.

(x) The Division of Investigation.

(y) The Bureau of Automotive Repair.

(z) The State Board of Registration for Geologists and Geophysicists.

(aa) The State Board of Nursing Home Administrators.

(ab) The Respiratory Care Board.

(ac) The Acupuncture Examining Committee.

(ad) The Board of Psychology.

(ae) The California Board of Podiatric Medicine.
(af) The Physical Therapy Board.
(ag) The Arbitration Review Program.
(ah) The Committee on Dental Auxiliaries.
(ai) The Hearing Aid Dispensers Examining Committee.
(aj) The Physician Assistant Examining Committee.
(ak) The Speech-Language Pathology and Audiology Board.
(a*l*) The Tax Preparers Program.
(am) Any other boards, offices, or officers subject to its jurisdiction by law.

SEC. 2. Section 144 is added to the Business and Professions Code, to read:

144. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following boards or committees:
(1) Board of Accountancy.
(2) State Athletic Commission.
(3) Board of Behavioral Sciences.
(4) Court Reporters Board of California.
(5) State Board of Guide Dogs for the Blind.
(6) California State Board of Pharmacy.
(7) Board of Registered Nursing.
(8) Veterinary Medical Board.
(9) Registered Veterinary Technician Examining Committee.
(10) Board of Vocational Nurse and Psychiatric Technician Examiners.
(11) Respiratory Care Board.
(12) Hearing Aid Dispensers Examining Committee.
(13) Physical Therapy Board of California.
(14) Physician Assistant Examining Committee.
(15) Speech-Language Pathology and Audiology Examining Committee.
(16) Medical Board of California.
(17) Board of Nursing Home Administrators.
(18) Board of Optometry.
(19) Acupuncture Committee.
(20) Cemetery and Funeral Programs.
(21) Bureau of Security and Investigative Services.
(22) Division of Investigation.
(23) Board of Psychology.

SEC. 2.3. Section 485 of the Business and Professions Code is amended to read:

485. Upon denial of an application for a license under this chapter or Section 496, the board shall do either of the following:

(a) File and serve a statement of issues in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Notify the applicant that the application is denied, stating (1) the reason for the denial, and (2) that the applicant has the right to a hearing under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code if written request for hearing is made within 60 days after service of the notice of denial. Unless written request for hearing is made within the 60-day period, the applicant's right to a hearing is deemed waived.

Service of the notice of denial may be made in the manner authorized for service of summons in civil actions, or by registered mail addressed to the applicant at the latest address filed by the applicant in writing with the board in his or her application or otherwise. Service by mail is complete on the date of mailing.

SEC. 2.4. Section 486 of the Business and Professions Code is amended to read:

486. Where the board has denied an application for a license under this chapter or Section 496, it shall, in its decision, or in its notice under subdivision (b) of Section 485, inform the applicant of the following:

(a) The earliest date on which the applicant may reapply for a license which shall be one year from the effective date of the decision, or service of the notice under subdivision (b) of Section 485, unless the board prescribes an earlier date or a later date is prescribed by another statute.

(b) That all competent evidence of rehabilitation presented will be considered upon a reapplication.

Along with the decision, or the notice under subdivision (b) of Section 485, the board shall serve a copy of the criteria relating to rehabilitation formulated under Section 482.

SEC. 2.5. Section 489 of the Business and Professions Code is amended to read:

489. Any agency in the department which is authorized by law to deny an application for a license upon the grounds specified in Section 480 or 496, may without a hearing deny an application upon any of those grounds, if within one year previously, and after proceedings conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that agency has denied an application from the same applicant upon the same ground.

SEC. 2.6. Section 810 of the Business and Professions Code is amended to read:

810. (a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license

or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 550 of the Penal Code.

(c) As used in this section, health care professional means any person licensed or certified pursuant to this division, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act.

SEC. 3. Section 2499.5 of the Business and Professions Code is amended to read:

2499.5. The following fees apply to certificates to practice podiatric medicine. The amount of fees prescribed for doctors of podiatric medicine shall be those set forth in this section unless a lower fee is established by the board in accordance with Section 2499.6. Fees collected pursuant to this section shall be fixed by the board in amounts not to exceed the actual costs of providing the service for which the fee is collected.

(a) Each applicant for a certificate to practice podiatric medicine shall pay an application fee of twenty dollars ($20) at the time the application is filed. If the applicant qualifies for a certificate, he or she shall pay a fee which shall be fixed by the board at an amount not to exceed one hundred dollars ($100) nor less than five dollars ($5) for the issuance of the certificate.

(b) The oral examination fee shall be seven hundred dollars ($700), or the actual cost, whichever is lower, and shall be paid by each applicant. If the applicant's credentials are insufficient or if the applicant does not desire to take the examination, and has so notified the board 30 days prior to the examination date, only the examination fee is returnable to the applicant. The board may charge an examination fee for any subsequent reexamination of the applicant.

(c) Each applicant who qualifies for a certificate, as a condition precedent to its issuance, in addition to other fees required by this section, shall pay an initial license fee. The initial license fee shall be eight hundred dollars ($800). The initial license shall expire the second year after its issuance on the last day of the month of birth of the licensee. The board may reduce the initial license fee by up to 50 percent of the amount of the fee for any applicant who is enrolled in a postgraduate training program approved by the board or who has completed a postgraduate training program approved by the board within six months prior to the payment of the initial license fee.

(d) The biennial renewal fee shall be eight hundred dollars ($800). Any licensee enrolled in an approved residency program shall be required to pay only 50 percent of the biennial renewal fee at the time of his or her first renewal.

(e) The delinquency fee is one hundred fifty dollars ($150).

(f) The duplicate wall certificate fee is forty dollars ($40).

(g) The duplicate renewal receipt fee is forty dollars ($40).

(h) The endorsement fee is thirty dollars ($30).

(i) The letter of good standing fee or for loan deferment is thirty dollars ($30).

(j) There shall be a fee of sixty dollars ($60) for the issuance of a limited license under Section 2475.

(k) The application fee for certification under Section 2473 shall be fifty dollars ($50). The examination and reexamination fee for this certification shall be seven hundred dollars ($700).

(*l*) The filing fee to appeal the failure of an oral examination shall be twenty-five dollars ($25).

(m) The fee for approval of a continuing education course or program shall be one hundred dollars ($100).

SEC. 4. 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) "Board" means the Speech-Language Pathology and Audiology Board.

(b) "Person" means any individual, partnership, corporation, limited liability company, or other organization or combination thereof, 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 board, 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 board, who works directly under the supervision of an audiologist.

(i) 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.

(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.

SEC. 5. Section 2530.5 of the Business and Professions Code is amended to read:

2530.5. (a) Nothing in this chapter shall be construed as restricting hearing testing conducted by licensed physicians and surgeons or by persons conducting hearing tests under the direct supervision of a physician and surgeon.

(b) Nothing in this chapter shall be construed to prevent a licensed hearing aid dispenser from engaging in testing of hearing

and other practices and procedures used solely for the fitting and selling of hearing aids nor does this chapter restrict persons practicing their licensed profession and operating within the scope of their licensed profession or employed by someone operating within the scope of their licensed professions, including persons fitting and selling hearing aids who are properly licensed or registered under the laws of the State of California.

(c) Nothing in this chapter shall be construed as restricting or preventing the practice of speech-language pathology or audiology by personnel holding the appropriate credential from the Commission on Teacher Credentialing as long as the practice is conducted within the confines of or under the jurisdiction of a public preschool, elementary or secondary school by which they are employed and those persons do not either offer to render or render speech-language pathology or audiology services to the public for compensation over and above the salary they receive from the public preschool elementary or secondary school by which they are employed for the performance of their official duties.

(d) Nothing in this chapter shall be construed as restricting the activities and services of a student or speech-language pathology intern in speech-language pathology pursuing a course of study leading to a degree in speech-language pathology at an accredited or approved college or university or an approved clinical training facility, provided that these activities and services constitute a part of his or her supervised course of study and that those persons are designated by the title as "speech-language pathology intern," "speech-language pathology trainee," or other title clearly indicating the training status appropriate to his or her level of training.

(e) Nothing in this chapter shall be construed as restricting the activities and services of a student or audiology intern in audiology pursuing a course of study leading to a degree in audiology at an accredited or approved college or university or an approved clinical training facility, provided that these activities and services constitute a part of his or her supervised course of study and that those persons are designated by the title as "audiology intern," "audiology trainee," or other title clearly indicating the training status appropriate to his or her level of training.

(f) Nothing in this chapter shall be construed as restricting the practice of an applicant who is obtaining the required professional experience specified in subdivision (d) of Section 2532.2 and whose required professional experience application has been approved by the board. The number of applicants who may be supervised by a licensed speech-language pathologist or a speech-language pathologist having qualifications deemed equivalent by the board shall be determined by the board. The supervising speech-language pathologist shall register with the board the name of each applicant working under his or her supervision, and shall submit to the board a description of the proposed professional responsibilities of the

applicant working under his or her supervision. The number of applicants who may be supervised by a licensed audiologist or an audiologist having qualifications deemed equivalent by the board shall be determined by the board. The supervising audiologist shall register with the board the name of each applicant working under his or her supervision, and shall submit to the board a description of the proposed professional responsibilities of the applicant working under his or her supervision. The board shall not give any credit for any required professional experience which is completed in violation of this section.

(g) Nothing in this chapter shall be construed as restricting hearing screening services in public or private elementary or secondary schools so long as these screening services are provided by persons registered as qualified school audiometrists pursuant to Sections 1685 and 1686 of the Health and Safety Code or hearing screening services supported by the State Department of Health Services so long as these screening services are provided by appropriately trained or qualified personnel.

(h) Persons employed as speech-language pathologists or audiologists by a federal agency shall be exempt from this chapter.

(i) Nothing in this chapter shall be construed as restricting consultation or the instructional or supervisory activities of a faculty member of an approved or accredited college or university for the first 60 days following appointment after the effective date of this subdivision.

SEC. 6. Section 2530.6 of the Business and Professions Code is amended to read:

2530.6. Speech-language pathologists and audiologists supervising speech-language pathology or audiology aides shall register with the board the name of each aide working under their supervision. The number of aides who may be supervised by a licensee shall be determined by the board. The supervising audiologist or speech-language pathologist shall be responsible for the extent, kind, and quality of services performed by the aide, consistent with the board's designated standards and requirements.

SEC. 7. Section 2531 of the Business and Professions Code is amended to read:

2531. There is hereby created a Speech-Language Pathology and Audiology Board under the jurisdiction of the Medical Board of California. The Speech-Language Pathology and Audiology Board shall consist of nine members, three of whom shall be public members. The Speech-Language Pathology and Audiology Board shall enforce and administer this chapter.

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

SEC. 8. Section 2531.05 of the Business and Professions Code is amended to read:

2531.05. The Hearing Aid Dispensers Examining Committee shall appoint one of its members to serve as liaison to the Speech-Language Pathology and Audiology Board for the purpose of coordinating the policies of the committee and board regarding the fitting or dispensing of hearing aids. The Speech-Language Pathology and Audiology Board shall notify the Hearing Aid Dispensers Examining Committee in advance of all board business concerning the fitting or dispensing of hearing aids to facilitate the participation of the liaison member.

SEC. 9. Section 2531.1 of the Business and Professions Code is amended to read:

2531.1. Each member of the board shall hold office for a term of four years, and shall serve 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 he or she was appointed, whichever first occurs. No member may serve for more than two consecutive terms.

SEC. 10. Section 2531.2 of the Business and Professions Code is amended to read:

2531.2. The membership of the board shall include three licensed speech-language pathologists, three licensed audiologists, and three public members one of whom is a licensed physician and surgeon, board certified in otolaryngology, and the remaining two public members who shall not be licentiates of the board or of any board under this division or of any board referred to in the Chiropractic Act or the Osteopathic Act.

The Governor shall appoint the physician and surgeon member and the other six licensed members qualified as provided in this section. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member, and their initial appointment shall be made to fill, respectively, the first and second public member vacancies which occur on or after January 1, 1983.

SEC. 11. Section 2531.3 of the Business and Professions Code is amended to read:

2531.3. The board shall examine every applicant for a speech-language pathology license or an audiology license at the time and place designated by the board in its discretion, but at least once in each year; and for that purpose may appoint qualified persons to give the whole or any portion of the examination, who shall be designated as commissioners on examination. A commissioner on examination need not be a member of the board, but shall be subject to the same rules and regulations and shall be entitled to the same fee as if he or she were a member of the board.

The board shall perform all examination functions, including but not limited to, participation in uniform examination systems.

SEC. 12. Section 2531.4 of the Business and Professions Code is amended to read:

2531.4. The board shall have full authority to investigate and to evaluate each and every applicant applying for a license to practice speech-language pathology or a license to practice audiology and to determine the admission of the applicant to the examination, if administered by the board, or to issue a license, in conformance with the provisions of, and qualifications required by, this chapter.

SEC. 13. Section 2531.5 of the Business and Professions Code is repealed.

SEC. 14. Section 2531.5 is added to the Business and Professions Code, to read:

2531.5. The board shall issue, suspend, and revoke licenses and approvals to practice speech-language pathology and audiology as authorized by this chapter.

SEC. 15. Section 2531.6 of the Business and Professions Code is amended to read:

2531.6. The Governor has power to remove from office any member of the board for neglect of any duty required by this chapter, for incompetency, or for unprofessional conduct.

SEC. 16. Section 2531.7 of the Business and Professions Code is amended to read:

2531.7. The board shall elect annually a chairperson and vice chairperson from among its members. The board shall hold at least one regular meeting each year. Additional meetings may be held upon call of the chairperson or at the written request of any two members of the board.

SEC. 17. Section 2531.75 is added to the Business and Professions Code, to read:

2531.75. 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.

SEC. 18. Section 2531.8 of the Business and Professions Code is amended to read:

2531.8. Five members of the board shall at all times constitute a quorum.

SEC. 19. Section 2531.9 of the Business and Professions Code is amended to read:

2531.9. Each member of the board shall receive a per diem and expenses as provided in Section 103.

SEC. 20. Section 2531.95 of the Business and Professions Code is amended to read:

2531.95. The board shall from time to time adopt the regulations that may be necessary to effectuate this chapter. In adopting regulations the board shall comply with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 21. Section 2532.1 of the Business and Professions Code is amended to read:

2532.1. (a) Each person desiring to obtain a license shall make application to the board, upon a form as prescribed by the board.

(b) A separate license shall be granted in both speech-language pathology and audiology. An applicant may be granted both licenses upon successful completion of the requirements for both licenses.

SEC. 22. Section 2532.2 of the Business and Professions Code is amended to read:

2532.2. To be eligible for licensure by the board as a speech-language pathologist or audiologist, the applicant shall possess all of the following qualifications:

(a) Possess at least a master's degree in speech-language pathology or audiology from an educational institution approved by the board or qualifications deemed equivalent by the board.

(b) Submit transcripts from an educational institution approved by the board evidencing the successful completion of at least 60 semester units of courses related to the normal development, function, and use of speech, hearing, and language; and courses that provide information about, and training in, the management of speech, hearing, and language disorders. At least 24 of the required 60 semester units shall be related to disorders of speech, voice, or language for speech-language pathology applicants or to disorders of hearing and the modification of communication disorders involving speech and language resulting from hearing disorders for audiology applicants. These 60 units do not include credit for thesis, dissertation, or clinical practice.

(c) Submit evidence of the satisfactory completion of supervised clinical practice with individuals representative of a wide spectrum of ages and communication disorders. The board shall establish by regulation the required number of clock hours, not to exceed 300 clock hours, of supervised clinical practice necessary for the applicant.

The clinical practice shall be under the direction of an educational institution approved by the board.

(d) Submit evidence of no less than nine months of satisfactorily completed supervised professional full-time experience or 18 months of professional part-time experience obtained under the supervision of a licensed speech-language pathologist or audiologist or a speech-language pathologist or audiologist having qualifications deemed equivalent by the board. This experience shall be evaluated and approved by the board. Any experience to be obtained in a setting which is not exempt from the licensure requirements under Section 2530.5 shall be approved in advance by the board. The required professional experience shall follow completion of the requirements listed in subdivisions (a), (b), and (c). Full-time is defined as at least nine months in a calendar year and a minimum of

30 hours per week. Part-time is defined as a minimum of 18 months and a minimum of 15 hours per week.

A speech-language pathologist or audiologist who holds a license from another state or territory of the United States or who holds equivalent qualifications and has made application to the board for a license in this state may practice speech-language pathology or audiology, as the case may be, without a valid license for a period not to exceed 150 days. With the approval of the board, such a speech-language pathologist or audiologist may be issued a license on completion of the requirements specified in subdivisions (a), (b), (c), and (e).

(e) Pass an examination or examinations approved by the board. The board shall determine the subject matter and scope of the examinations and may waive the examination upon evidence that the applicant has successfully completed an examination approved by the board. Written examinations may be supplemented by such oral examinations as the board shall determine. An applicant who fails his or her examination may be reexamined at a subsequent examination upon payment of the reexamination fee required by this chapter.

SEC. 23. Section 2532.4 of the Business and Professions Code is amended to read:

2532.4. (a) The board may direct applicants to be examined for knowledge in whatever theoretical or applied fields in speech-language pathology or audiology it deems appropriate. It may examine the applicant with regard to his or her professional skills and his or her judgment in the utilization of speech-language pathology or audiology techniques and methods.

(b) The examination may be written or oral or both. The examination shall be given at least once a year at the time and place and under such supervision as the board may determine. The board shall determine what shall constitute a passing grade.

(c) The board shall keep an accurate recording of any oral examination and keep the recordings as well as any written examination as part of its records for at least two years following the date of examination.

SEC. 24. Section 2533.4 of the Business and Professions Code is amended to read:

2533.4. Whenever any person other than a licensed speech-language pathologist or audiologist has engaged in any act or practice which constitutes an offense against this chapter, a superior court of any county, on application of the board, may issue an injunction or other appropriate order restraining that conduct. 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. The board may commence action in the superior court under this section on its own motion.

SEC. 25. Section 2534 of the Business and Professions Code is amended to read:

2534. The board shall report to the Controller at the beginning of each month for the month preceding the amount and source of all revenue received by it pursuant to this chapter, and shall pay the entire amount thereof to the Treasurer for deposit in the Speech-Language Pathology and Audiology Board Fund, which fund is hereby created and is continuously appropriated to carry out the purposes of this chapter.

SEC. 26. Section 2534.1 of the Business and Professions Code is amended to read:

2534.1. The board shall keep records that will reasonably ensure that funds expended in the administration of each licensing or registration category shall bear a reasonable relation to the revenue derived from each category.

SEC. 27. Section 2534.2 of the Business and Professions Code is amended to read:

2534.2. The amount of the fees prescribed by this chapter is that fixed by the following schedule:

(a) The application fee and renewal fee shall be established by the board in an amount which does not exceed one hundred fifty dollars ($150) but is sufficient to support the functions of the board which relate to the functions authorized by this chapter.

(b) The delinquency fee shall be twenty-five dollars ($25).

(c) The reexamination fee shall be established by the board in an amount which does not exceed seventy-five dollars ($75).

(d) The fee for registration of an aide shall be established by the board in an amount which does not exceed thirty dollars ($30).

(e) The duplicate wall certificate fee is twenty-five dollars ($25).

(f) The duplicate renewal receipt fee is twenty-five dollars ($25).

SEC. 28. Section 2535 of the Business and Professions Code is amended to read:

2535. (a) All licenses issued as of January 1, 1992, shall expire at 12 a.m. of the last date of the birth month of the licensee during the second year of a two-year term if not renewed.

(b) All licenses issued under this chapter, except those licenses issued pursuant to subdivision (a), shall expire at 12 a.m. of the last date of the birth month of the licensee during the second year of a two-year term, if not renewed.

(c) To renew an unexpired license, the licensee shall, on or before the date of expiration of the license, apply for renewal on a form provided by the board, accompanied by the prescribed renewal fee.

SEC. 29. Section 2535.2 of the Business and Professions Code is amended to read:

2535.2. Except as provided in Section 2535.3, a license which has expired may be renewed at any time within five years after its expiration upon filing of an application for renewal on a form prescribed by the board and payment of the renewal fee in effect on the last regular renewal date. If the license is not renewed on or before its expiration, the licensee, as a condition precedent to

renewal, shall also pay the prescribed delinquency fee. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee is paid, whichever last occurs. If so renewed, the license shall continue in effect through the expiration date provided in Section 2535, after the effective date of the renewal, when it shall expire and become invalid if it is not again renewed.

SEC. 30. Section 2535.4 of the Business and Professions Code is amended to read:

2535.4. A person who fails to renew his or her license within the five years after its expiration may not renew it, and it may not be restored, reissued, or reinstated thereafter, but that person may apply for and obtain a new license if he or she meets all of the following requirements:

(a) Has not committed any acts or crimes constituting grounds for denial of licensure under Division 1.5 (commencing with Section 475).

(b) Takes and passes the examination or examinations, if any, which would be required of him or her if an initial application for licensure was being made, or otherwise establishes to the satisfaction of the board that, with due regard for the public interest, he or she is qualified to practice as a speech-language pathologist or audiologist, as the case may be.

(c) Pays all of the fees that would be required if an initial application for licensure was being made. In addition, the board may charge the applicant a fee to cover the actual costs of any examination that it may administer.

SEC. 31. Section 2536 of the Business and Professions Code is amended to read:

2536. A speech-language pathology corporation or an audiology corporation is a corporation which 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 speech-language pathologists or audiologists 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.

With respect to a speech-language pathology corporation or an audiology corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Speech-Language Pathology and Audiology Board.

SEC. 32. Section 2539 of the Business and Professions Code is amended to read:

2539. The board may adopt and enforce regulations to carry out the purposes and objectives of this article, and the Moscone-Knox Professional Corporation Act, including regulations requiring (a)

that the bylaws of a speech-language pathology corporation or an audiology corporation shall include a provision whereby the capital stock of the corporation owned by a disqualified person as defined in Section 13401 of the Corporations Code, or a deceased person shall be sold to the corporation or to the remaining shareholders of the corporation within such time as the regulations may provide, and (b) that a speech-language pathology corporation or an audiology corporation shall provide adequate security by insurance or otherwise for claims against it by its patients arising out of the rendering of professional services.

SEC. 33. Section 2760.1 of the Business and Professions Code is amended to read:

2760.1. (a) A registered nurse 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 reduction or termination of probation, after a period not less than the following minimum periods has elapsed from the effective date of the decision ordering that disciplinary action, or if the order of the board or any portion of it is stayed by the board itself or by the superior court, from the date the disciplinary action is actually implemented in its entirety:

(1) Except as otherwise provided in this section, at least three years for reinstatement of a license that was revoked, except that the board may, in its sole discretion, specify in its order a lesser period of time provided that the period shall be not less than one year.

(2) At least two years for early termination of a probation period 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 board shall give notice to the Attorney General of the filing of the petition. The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition, and an opportunity to present both oral and documentary evidence and argument to the board. The petitioner shall at all times have the burden of proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition.

(c) The hearing may be continued from time to time as the board deems appropriate.

(d) The board itself shall hear the petition and the administrative law judge shall prepare a written decision setting forth the reasons supporting the decision.

(e) The board may grant or deny the petition, or may impose any terms and conditions that it reasonably deems appropriate as a condition of reinstatement or reduction of penalty.

(f) The petitioner shall provide a current set of fingerprints accompanied by the necessary fingerprinting fee.

(g) No petition 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, or subject to an order of registration as a mentally disordered sex offender pursuant to Section 290 of the Penal Code. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

(h) Except in those cases where the petitioner has been disciplined for violation of Section 822, the board may in its discretion deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

SEC. 34. Section 2902 of the Business and Professions Code is amended to read:

2902. As used in this chapter, unless the context clearly requires otherwise and except as in this chapter expressly otherwise provided:

(a) "Licensed psychologist" means an individual to whom a license has been issued pursuant to the provisions of this chapter, which license is in force and has not been suspended or revoked.

(b) "Board" means the Board of Psychology.

(c) A person represents himself or herself to be a psychologist when the person holds himself or herself out to the public by any title or description of services incorporating the words "psychology," "psychological," "psychologist," "psychology consultation," "psychology consultant," "psychometry," "psychometrics" or "psychometrist," "psychotherapy," "psychotherapist," "psychoanalysis," or "psychoanalyst," or when the person holds himself or herself out to be trained, experienced, or an expert in the field of psychology.

(d) "Accredited," as used with reference to academic institutions, means the University of California, the California State University, an institution accredited under Section 94761 of the Education Code, or an institution located in another state that is accredited by a national or an applicable regional accrediting agency recognized by the United States Department of Education.

(e) "Approved," as used with reference to academic institutions, means approved under Section 94777 of the Education Code.

SEC. 35. Section 2928 of the Business and Professions Code is amended to read:

2928. The board shall administer and enforce this chapter.

SEC. 36. Section 2929 of the Business and Professions Code is amended to read:

2929. The board shall adopt a seal, which shall be affixed to all licenses issued by the board.

SEC. 37. Section 2933 of the Business and Professions Code is amended to read:

2933. Except as provided by Section 159.5, the board shall employ and shall make available to the board within the limits of the funds

received by the board all personnel necessary to carry out this chapter. The board may employ, exempt from the State Civil Service Act, an executive officer to the Board of Psychology. The board shall make all expenditures to carry out this chapter. The board may accept contributions to effectuate the purposes of this chapter.

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

SEC. 38. Section 2940 of the Business and Professions Code is amended to read:

2940. Each person desiring to obtain a license from the board shall make application to the board. The application shall be made upon a form and shall be made in a manner as the board prescribes in regulations duly adopted under this chapter.

The application shall be accompanied by the application fee prescribed by Section 2949. This fee shall not be refunded by the board.

SEC. 39. Section 2941 of the Business and Professions Code is amended to read:

2941. Each applicant for a psychology license shall be examined by the board, and shall pay to the board, at least 30 days prior to the date of examination, the examination fee prescribed by Section 2987, which fee shall not be refunded by the board.

SEC. 40. Section 2948 of the Business and Professions Code is amended to read:

2948. The board shall issue a license to all applicants who meet the requirements of this chapter and who pay to the board the initial license fee provided in Section 2987.

SEC. 41. Section 2971 of the Business and Professions Code is amended to read:

2971. Whenever any person other than a licensed psychologist has engaged in any act or practice that constitutes an offense against this chapter, the superior court of any county, on application of the board, may issue an injunction or other appropriate order restraining that conduct. Proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7, Part 2 of the Code of Civil Procedure, except that it shall be presumed that there is no adequate remedy at law, and that irreparable damage will occur if the continued violation is not restrained or enjoined. On the written request of the board, or on its own motion, the board may commence action in the superior court under this section.

SEC. 42. Section 2980 of the Business and Professions Code is amended to read:

2980. There is in the State Treasury the Psychology Fund. The board shall report to the Controller at the beginning of each calendar month, for the month preceding, the amount and source of all revenue received by it, pursuant to this chapter, and shall pay the

entire amount thereof to the Treasurer for deposit into that fund. All revenue received by the board from fees authorized to be charged relating to the practice of psychology shall be deposited into that fund as provided in this section.

SEC. 43. Section 2984 of the Business and Professions Code is amended to read:

2984. Except as provided in Section 2985, a license which has expired may be renewed at any time within three years after its expiration on filing of application for renewal on a form prescribed by the board and payment of the renewal fee in effect on the last regular renewal date. If the license is not renewed within 30 days after its expiration, the licensee, as a condition precedent to renewal, shall also pay the prescribed delinquency fee, if any. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in effect through the expiration date provided in Section 2982 which next occurs after the effective date of the renewal, when it shall expire and become invalid if it is not again renewed.

SEC. 44. Section 3325 of the Business and Professions Code is amended to read:

3325. Notice of each meeting of the committee shall be given in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 44.5. Section 3328 of the Business and Professions Code is amended to read:

3328. The committee may adopt, amend, or repeal, in accordance with the provisions of the Administrative Procedure Act, regulations that are necessary to enable the committee to carry into effect the provisions of law relating to the practice of fitting or selling hearing aids. All regulations adopted, amended, or repealed by the committee, except those regulations adopted in furtherance of Sections 3327.5 and 3456, shall be subject to the review and approval of the board in accordance with the following procedure:

(a) The committee shall file with the board, and concurrently with the Office of Administrative Law, the notice of proposed adoption, amendment, or repeal of regulations, the express terms of the proposed regulations, and the initial statement of reasons for those regulations. The board may file written testimony regarding any proposed regulations with the committee and the committee shall file the testimony with the Office of Administrative Law.

(b) After the committee adopts, amends, or repeals any regulation pursuant to this section, the committee shall submit those regulations to the board. The board shall notify the committee of its approval or rejection of the regulations within 30 days of the submission by the committee. If the board fails to act within 30 days, the regulations

shall be deemed approved. The board may act on the regulations at a regularly scheduled meeting or by a review of the written material from the committee. Any action taken after a review of the written material may be taken by a mail vote. The approval of regulations shall require the affirmative vote of a majority of the members then appointed.

(c) In the event the board disapproves a regulation, it shall notify the committee in writing of the basis for its disapproval.

SEC. 45. Section 3362 of the Business and Professions Code is amended to read:

3362. (a) Before engaging in the practice of fitting or selling hearing aids, each licensee shall notify the committee in writing of the address or addresses where he or she is to engage, or intends to engage, in the fitting or selling of hearing aids, and of any changes in his or her place of business.

(b) If a street address is not the address at which the licensee receives mail, the licensee shall also notify the committee in writing of the mailing address for each location where the licensee is to engage, or intends to engage, in the fitting or selling of hearing aids, and of any change in the mailing address of his or her place or places of business.

SEC. 46. Section 3401 of the Business and Professions Code is amended to read:

3401. The committee may deny, issue subject to terms and conditions, suspend, or revoke a license, or impose conditions of probation upon a licensee, for any of the following causes:

(a) Gross incompetency, which includes, but is not limited to, the improper or unnecessary fitting of a hearing aid.

(b) Gross negligence.

(c) Repeated negligent acts.

(d) Conviction of any crime substantially related to the qualifications, functions, or duties of a hearing aid dispenser.

(e) Obtaining a license by fraud or deceit.

(f) Use of the term "doctor" or "physician" or "clinic" or "audiologist," or any derivation thereof, except as authorized by law.

(g) Fraud or misrepresentation in the fitting or selling of a hearing aid.

(h) The employment, to perform any act covered by this chapter, of any person whose license has been suspended, revoked, or who does not possess a valid license issued under this chapter.

(i) The use, or causing the use, of any advertising or promotional literature in a manner that has the capacity or tendency to mislead or deceive purchasers or prospective purchasers.

(j) Habitual intemperance in the use of alcohol or any controlled substance.

(k) Permitting another to use his or her license for any purpose.

(*l*) Violation of any provision of this chapter or of any regulation adopted pursuant to this chapter.

(m) Any cause that would be grounds for denial of an application for a license.

(n) Violation of Section 1689.6 or 1793.02 of the Civil Code.

SEC. 47. Section 5029 of the Business and Professions Code is amended to read:

5029. The board may establish an advisory continuing education committee of nine members, six of whom shall be certified public accountants, two of whom shall be board members, one of whom is a public member of the board, and one of whom shall be a public accountant, to perform any of the following duties:

(a) To evaluate programs and advise the board as to whether they qualify under the regulations adopted by the board pursuant to subdivision (f) of Section 5027. Educational courses offered by professional accounting societies shall be accepted by the board as qualifying if the courses are approved by the committee as meeting the requirements of the board under the regulations.

(b) To consider applications for exceptions as permitted under Section 5028 and provide a recommendation to the board.

(c) To consider other advisory matters relating to the requirements of this article as the board may assign to the committee.

SEC. 48. Section 5107 of the Business and Professions Code is amended to read:

5107. (a) The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found guilty of unprofessional conduct in violation of subdivisions (b), (c), (i), or (j) of Section 5100, or involving a felony conviction in violation of subdivision (a) of Section 5100, or involving fiscal dishonesty in violation of subdivision (h) of Section 5100, to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing.

(b) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the executive officer, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case.

(c) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested to do so by the executive officer pursuant to subdivision (a). Costs are payable 120 days after the board's decision is final unless otherwise provided for by the administrative law judge or if the time for payment is extended by the board.

(d) The finding of the administrative law judge with regard to cost shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested by the executive officer pursuant to subdivision (a).

(e) The administrative law judge may make a further finding that the amount of reasonable costs awarded shall be reduced or eliminated upon a finding that respondent has demonstrated that he or she cannot pay all or a portion of the costs or that payment of the costs would cause an unreasonable financial hardship which cannot be remedied through a payment plan.

(f) When an administrative law judge makes a finding that costs be waived or reduced, he or she shall set forth the factual basis for his or her finding in the proposed decision.

(g) Where an order for recovery of costs is made and timely payment is not made as directed by the board's decision, the board may enforce the order for payment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any holder of a permit or certificate directed to pay costs.

(h) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms of payment.

(i) All costs recovered under this section shall be deposited in the Accountancy Fund.

(j) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the permit or certificate of any holder who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the permit or certificate of any holder who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for those unpaid costs.

(k) Nothing in this section shall preclude the board from seeking recovery of costs in an order or decision made pursuant to an agreement entered into between the board and the holder of any permit or certificate.

SEC. 49. Section 6529 of the Business and Professions Code is repealed.

SEC. 50. Section 6548 of the Business and Professions Code, as amended by Chapter 1673 of the Statutes of 1990, is repealed.

SEC. 51. Section 6560 of the Business and Professions Code, as amended by Chapter 1673 of the Statutes of 1990, is repealed.

SEC. 52. Section 6625 of the Business and Professions Code, as amended by Chapter 1673 of the Statutes of 1990, is repealed.

SEC. 53. Section 6630 of the Business and Professions Code, as amended by Chapter 1673 of the Statutes of 1990, is repealed.

SEC. 54. Section 6632 of the Business and Professions Code, as amended by Chapter 1673 of the Statutes of 1990, is repealed.

SEC. 55. Section 6633 of the Business and Professions Code, as amended by Chapter 1673 of the Statutes of 1990, is repealed.

SEC. 56. Section 6634 of the Business and Professions Code, as amended by Chapter 1673 of the Statutes of 1990, is repealed.

SEC. 57. Section 6635 of the Business and Professions Code, as amended by Chapter 1673 of the Statutes of 1990, is repealed.

SEC. 58. Section 6635.2 of the Business and Professions Code, as amended by Chapter 1673 of the Statutes of 1990, is repealed.

SEC. 59. Section 6636 of the Business and Professions Code is repealed.

SEC. 60. Section 7302 of the Business and Professions Code, as amended by Chapter 1674 of the Statutes of 1990, is repealed.

SEC. 61. Section 7311 of the Business and Professions Code, as amended by Chapter 1674 of the Statutes of 1990, is repealed.

SEC. 62. Section 7312 of the Business and Professions Code, as amended by Chapter 1674 of the Statutes of 1990, is repealed.

SEC. 63. Section 7314 of the Business and Professions Code, as amended by Chapter 1674 of the Statutes of 1990, is repealed.

SEC. 64. Section 7314.1 of the Business and Professions Code, as amended and renumbered by Chapter 1674 of the Statutes of 1990, is repealed.

SEC. 65. Section 7314.2 of the Business and Professions Code, as added by Chapter 1674 of the Statutes of 1990, is repealed.

SEC. 66. Section 7320 of the Business and Professions Code, as amended by Chapter 1674 of the Statutes of 1990, is repealed.

SEC. 67. Section 7322 of the Business and Professions Code, as amended by Chapter 1674 of the Statutes of 1990, is repealed.

SEC. 67.1. Section 7330 of the Business and Professions Code is amended to read:

7330. The board shall admit to examination for a license as an electrologist to practice electrolysis, any person who has made application to the board in proper form, paid the fee required by this chapter, and is qualified as follows:

(a) Is not less than 17 years of age.

(b) Has completed the 12th grade or an accredited senior high school course of study in public schools of this state or its equivalent.

(c) Is not subject to denial pursuant to Section 480.

(d) Has done any of the following:

(1) Completed a course of training in electrolysis from a school approved by the board.

(2) Practiced electrolysis, as defined in this chapter, for a period of 18 months outside of this state within the time equivalent to the study and training of a qualified person who has completed a course in electrolysis from a school the curriculum of which complied with requirements adopted by the board. Each three months of practice shall be deemed the equivalent of 100 hours of training for qualification under paragraph (1).

(3) Completed the apprenticeship program in electrology specified in Article 4 (commencing with Section 7332).

SEC. 67.2. Section 7335 of the Business and Professions Code is amended to read:

7335. (a) The license of an apprentice shall expire two years from the date the license was issued, or on the date the apprentice is issued a license following the license examination, or if the apprentice fails the license examination twice, on the date the results of the second examination are issued, whichever occurs first.

(b) No person holding a license as an apprentice shall work more than three months after completing the required training without applying for and taking the examination for licensure.

(c) The board may extend the two-year or three-month period described in subdivisions (a) and (b) upon a showing of good cause which shall include, but not be limited to, delays in applying for and taking the examination caused by the illness of, or accident to, the apprentice, or service in the armed forces of the United States.

SEC. 67.3. Section 7337 of the Business and Professions Code is amended to read:

7337. Every application for admission to examination and licensure shall be in writing, on forms prepared and furnished by the board.

Each application shall be accompanied by the required fee, and shall contain proof of the qualifications of the applicant for examination and licensure. It shall be verified by the oath of the applicant. Every applicant shall, as a condition of admittance to the examination facility, present satisfactory proof of identification. Satisfactory proof of identification shall be in the form of a valid, unexpired driver's license or identification card, containing the photograph of the person to whom it was issued, issued by any state, federal, or other government entity.

SEC. 67.4. Section 7340 of the Business and Professions Code is amended to read:

7340. All examinations shall be prepared by or under the direction of the board. The board shall establish standards and procedures governing administration and grading and shall exercise supervision as may be necessary to assure compliance therewith.

SEC. 67.5. Section 7404 of the Business and Professions Code is amended to read:

7404. The grounds for disciplinary action are as follows:

(a) Unprofessional conduct which includes, but is not limited to, any of the following:

(1) Incompetence or gross negligence, including failure to comply with generally accepted standards for the practice of barbering, cosmetology, or electrology or disregard for the health and safety of patrons.

(2) Repeated similar negligent acts.

(3) Conviction of any crime substantially related to the qualifications, functions, or duties of the licenseholder, in which case,

the records of conviction or a certified copy shall be conclusive evidence thereof.

(4) Advertising by means of knowingly false or deceptive statements.

(b) Failure to comply with the requirements of this chapter.

(c) Failure to comply with the rules governing health and safety adopted by the board and approved by the State Department of Health Services, for the regulation of establishments, or any practice licensed and regulated under this chapter.

(d) Failure to comply with the rules adopted by the board for the regulation of establishments, or any practice licensed and regulated under this chapter.

(e) Continued practice by a person knowingly having an infectious or contagious disease.

(f) Habitual drunkenness, habitual use of or addiction to the use of any controlled substance.

(g) Obtaining or attempting to obtain practice in any occupation licensed and regulated under this chapter, or money, or compensation in any form, by fraudulent misrepresentation.

(h) Failure to display the license or health and safety rules and regulations in a conspicuous place.

(i) Engaging, outside of a licensed establishment and for compensation in any form whatever, in any practice for which a license is required under this chapter, except that when such service is provided because of illness or other physical or mental incapacitation of the recipient of the service and when performed by a licensee obtained for the purpose from a licensed establishment.

(j) Permitting a license to be used where the holder is not personally, actively, and continuously engaged in business.

(k) The making of any false statement as to a material matter in any oath or affidavit, which is required by the provisions of this chapter.

(*l*) Refusal to permit or interference with an inspection authorized under this chapter.

(m) Any action or conduct which would have warranted the denial of a license.

(n) Failure to surrender a license that was issued in error or by mistake.

SEC. 67.6. Section 7414 of the Business and Professions Code is amended to read:

7414. Persons who fail to pay administrative fines shall not be allowed to renew any licenses issued to them until all fines are paid in addition to any renewal or delinquency fees which are required.

SEC. 67.7. Section 7415 of the Business and Professions Code is amended to read:

7415. Licenses issued under this chapter, unless specifically excepted, shall be issued for a two-year period and shall expire at midnight on the last day of the month of issuance by the board.

SEC. 67.8. Section 7417 of the Business and Professions Code is amended to read:

7417. Except as otherwise provided in this article, a license that has expired for failure of the licensee to renew within the time fixed by this article may be renewed at any time within five years following its expiration upon application and payment of all accrued and unpaid renewal fees and delinquency fees. If the license is renewed more than 30 days after its expiration, the licensee, as a condition precedent to renewal, shall also pay the delinquency fee and meet current continuing education requirements, if applicable, prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, or on the date on which the accrued renewal fees are paid, or on the date on which the delinquency fee, if any, is paid, whichever occurs last. If so renewed, the license shall continue in effect through the expiration date provided in this article which next occurs following the effective date of the renewal, when it shall expire if it is not again renewed.

SEC. 67.9. Section 7427 of the Business and Professions Code is repealed.

SEC. 68. Section 7373 of the Business and Professions Code, as amended by Chapter 1674 of the Statutes of 1990, is repealed.

SEC. 69. Section 7384 of the Business and Professions Code, as amended by Chapter 1674 of the Statutes of 1990, is repealed.

SEC. 70. Section 7390 of the Business and Professions Code, as added by Chapter 1674 of the Statutes of 1990, is repealed.

SEC. 71. Section 7391 of the Business and Professions Code, as added by Chapter 1674 of the Statutes of 1990, is repealed.

SEC. 72. Section 7392 of the Business and Professions Code, as added by Chapter 1674 of the Statutes of 1990, is repealed.

SEC. 73. Section 7393 of the Business and Professions Code, as added by Chapter 1674 of the Statutes of 1990, is repealed.

SEC. 74. Section 7394 of the Business and Professions Code, as added by Chapter 1674 of the Statutes of 1990, is repealed.

SEC. 75. Section 7395 of the Business and Professions Code, as added by Chapter 1674 of the Statutes of 1990, is repealed.

SEC. 76. Section 7412 of the Business and Professions Code, as amended by Chapter 1674 of the Statutes of 1990, is repealed.

SEC. 77. Section 7420 of the Business and Professions Code, as amended by Chapter 1674 of the Statutes of 1990, is repealed.

SEC. 78. Section 7423 of the Business and Professions Code is amended to read:

7423. The amounts of the fees required by this chapter relating to licenses for individual practitioners are as follows:

(a) Cosmetologist application, examination and initial license fee shall be not more than fifty dollars ($50).

(b) Esthetician application, examination and initial license fee shall be not more than forty dollars ($40).

(c) Manicurist application, examination and initial license fee shall be not more than thirty-five dollars ($35).

(d) Barber application, examination and initial license fee shall be not more than fifty dollars ($50).

(e) Electrologist application, examination and initial license fee shall be not more than fifty dollars ($50).

(f) Apprentice application and license fee shall be not more than twenty-five dollars ($25).

(g) The license renewal fee for individual practitioner licenses that are subject to renewal shall be not more than fifty dollars ($50).

(h) The license renewal delinquency fee shall be 50 percent of the renewal fee in effect on the date of renewal, notwithstanding Section 163.5.

(i) Any preapplication fee shall be established by the board in an amount sufficient to cover the costs of processing and administration of the preapplication.

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

SEC. 78.5. Section 7431 of the Business and Professions Code, as amended by Chapter 1674 of the Statutes of 1990, is repealed.

SEC. 79. Section 7436 of the Business and Professions Code, as amended by Chapter 1674 of the Statutes of 1990, is repealed.

SEC. 80. Section 7437 of the Business and Professions Code, as amended by Chapter 1674 of the Statutes of 1990, is repealed.

SEC. 81. Section 7437.3 of the Business and Professions Code, as amended by Chapter 1674 of the Statutes of 1990, is repealed.

SEC. 82. Section 7444 of the Business and Professions Code, as amended by Chapter 1675 of the Statutes of 1990, is repealed.

SEC. 83. Section 7860 of the Business and Professions Code is amended to read:

7860. (a) The board may, upon its own initiative or upon the receipt of a complaint, investigate the actions of any registered geologist, geophysicist, or person granted temporary authorizations pursuant to Sections 7848 and 7848.1, and make findings thereon.

(b) By a majority vote, the board may publicly reprove, suspend for a period not to exceed two years, or revoke the certificate of any geologist or geophysicist registered hereunder, or may publicly reprove or revoke the temporary authorization granted to any person pursuant to Section 7848 or 7848.1, on any of the following grounds:

(1) Conviction of a crime substantially related to the qualifications, functions, or duties of a geologist or geophysicist.

(2) Misrepresentation, fraud, or deceit by a geologist or geophysicist in his or her practice.

(3) Negligence or incompetence by a geologist or geophysicist in his or her practice.

(4) Violation of any contract undertaken in the capacity of a geologist or geophysicist.

(5) Fraud or deceit in obtaining a certificate to practice as a geologist or geophysicist, or in obtaining a temporary authorization to practice pursuant to Section 7848 or 7848.1.

(c) By a majority vote, the board may publicly reprove, suspend for a period not to exceed two years, or may revoke the certificate of any geologist or geophysicist registered hereunder, or may publicly reprove or revoke the temporary authorization granted to any person pursuant to Section 7848 or 7848.1, for unprofessional conduct. Unprofessional conduct includes, but is not limited to, any of the following:

(1) Aiding or abetting any person in a violation of this chapter or any regulation adopted by the board pursuant to this chapter.

(2) Violating this chapter or any regulation adopted by the board pursuant to this chapter.

(3) Conduct in the course of practice as a geologist or geophysicist that violates professional standards adopted by the board.

SEC. 84. Section 13401.5 of the Corporations Code is amended to read:

13401.5. Notwithstanding subdivision (d) of Section 13401 and any other provision of law, the following licensed persons may be shareholders, officers, directors, or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by those licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein, and so long as the number of those licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating the designated professional corporation:

(a) Medical corporation.
(1) Licensed doctors of podiatric medicine.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed marriage, family, and child counselors.
(6) Licensed clinical social workers.
(7) Licensed physician assistants.
(8) Licensed chiropractors.
(b) Podiatric medical corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed chiropractors.
(c) Psychological corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Registered nurses.

(4) Licensed optometrists.
(5) Licensed marriage, family, and child counselors.
(6) Licensed clinical social workers.
(7) Licensed chiropractors.
(d) Speech-language pathology corporation.
(1) Licensed audiologists.
(e) Audiology corporation.
(1) Licensed speech-language pathologists.
(f) Nursing corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Licensed optometrists.
(5) Licensed marriage, family, and child counselors.
(6) Licensed clinical social workers.
(7) Licensed physician assistants.
(8) Licensed chiropractors.
(g) Marriage, family, and child counseling corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed clinical social workers.
(4) Registered nurses.
(5) Licensed chiropractors.
(h) Licensed clinical social worker corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed marriage, family, and child counselors.
(4) Registered nurses.
(5) Licensed chiropractors.
(i) Physician assistants corporation.
(1) Licensed physicians and surgeons.
(2) Registered nurses.
(j) Optometric corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed chiropractors.
(k) Chiropractic corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.
(6) Licensed marriage, family, and child counselors.
(7) Licensed clinical social workers.
(*l*) Acupuncture corporation.
(1) Licensed physicians and surgeons.

(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.
(6) Licensed marriage, family, and child counselors.
(7) Licensed clinical social workers.
(8) Licensed physician assistants.
(9) Licensed chiropractors.

CHAPTER 759

An act to amend Sections 101, 128.5, 130, 200.1, 205, 675, 800, 1242.6, 1680, 2071, 2221.1, 2660, 2701, 2708, 2761, 2841, 2842, 2847, 2873.6, 2873.7, 2881, 2890, 2893, 2894, 3527, 3750, 4001, 4003, 4008, 4501, 4503, 4546, 4547, 4800, 4804.5, 4848, 4905, 4955, 5510, 5517, 5526, 5536.27, 8520, and 8528 of, to amend and repeal Sections 5566, 5566.1, and 5566.2 of, to add Sections 473.15, 473.16, 473.6, and 4832 to, to amend, repeal, and add Sections 4833, 4834, 4835, and 4842.2 of, the Business and Professions Code, relating to licensed professionals, and making an appropriation therefor.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 7, 1997.]

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

SECTION 1. Section 101 of the Business and Professions Code is amended to read:

101. The department is composed of:
(a) The Board of Dental Examiners of California.
(b) The Medical Board of California.
(c) The State Board of Optometry.
(d) The California State Board of Pharmacy.
(e) The Veterinary Medical Board.
(f) The Board of Accountancy.
(g) The California State Board of Architectural Examiners.
(h) The State Board of Barbering and Cosmetology.
(i) The State Board of Registration for Professional Engineers and Land Surveyors.
(j) The Contractors' State License Board.
(k) The State Board of Funeral Directors and Embalmers.
(*l*) The Structural Pest Control Board.
(m) The Bureau of Home Furnishings and Thermal Insulation.
(n) The Board of Registered Nursing.
(o) The Board of Behavioral Science Examiners.
(p) The State Athletic Commission.
(q) The Cemetery Board.

(r) The State Board of Guide Dogs for the Blind.
(s) The Bureau of Security and Investigative Services.
(t) The Court Reporters Board of California.
(u) The Board of Vocational Nursing and Psychiatric Technicians.
(v) The California State Board of Landscape Architects.
(w) The Bureau of Electronic and Appliance Repair.
(x) The Division of Investigation.
(y) The Bureau of Automotive Repair.
(z) The State Board of Registration for Geologists and Geophysicists.
(aa) The State Board of Nursing Home Administrators.
(ab) The Respiratory Care Examining Committee.
(ac) The Acupuncture Examining Committee.
(ad) The Board of Psychology.
(ae) The California Board of Podiatric Medicine.
(af) The Physical Therapy Examining Committee.
(ag) The Arbitration Review Program.
(ah) The Committee on Dental Auxiliaries.
(ai) The Hearing Aid Dispensers Examining Committee.
(aj) The Physician Assistant Examining Committee.
(ak) The Speech-Language Pathology and Audiology Examining Committee.
(a*l*) The Tax Preparers Program.
(am) Any other boards, offices, or officers subject to its jurisdiction by law.

SEC. 1.5. Section 101 of the Business and Professions Code is amended to read:

101. The department is comprised of:
(a) The Board of Dental Examiners of California.
(b) The Medical Board of California.
(c) The State Board of Optometry.
(d) The California State Board of Pharmacy.
(e) The Veterinary Medical Board.
(f) The Board of Accountancy.
(g) The California State Board of Architectural Examiners.
(h) The State Board of Barbering and Cosmetology.
(i) The State Board of Registration for Professional Engineers and Land Surveyors.
(j) The Contractors' State License Board.
(k) The State Board of Funeral Directors and Embalmers.
(*l*) The Structural Pest Control Board.
(m) The Bureau of Home Furnishings and Thermal Insulation.
(n) The Board of Registered Nursing.
(o) The Board of Behavioral Science Examiners.
(p) The State Athletic Commission.
(q) The Cemetery Board.
(r) The State Board of Guide Dogs for the Blind.
(s) The Bureau of Security and Investigative Services.

(t) The Court Reporters Board of California.
(u) The Board of Vocational Nursing and Psychiatric Technicians.
(v) The California State Board of Landscape Architects.
(w) The Bureau of Electronic and Appliance Repair.
(x) The Division of Investigation.
(y) The Bureau of Automotive Repair.
(z) The State Board of Registration for Geologists and Geophysicists.
(aa) The State Board of Nursing Home Administrators.
(ab) The Respiratory Care Examining Committee.
(ac) The Acupuncture Examining Committee.
(ad) The Board of Psychology.
(ae) The California Board of Podiatric Medicine.
(af) The Physical Therapy Board.
(ag) The Arbitration Review Program.
(ah) The Committee on Dental Auxiliaries.
(ai) The Hearing Aid Dispensers Examining Committee.
(aj) The Physician Assistant Examining Committee.
(ak) The Speech-Language Pathology and Audiology Board.
(a*l*) The Tax Preparers Program.
(am) Any other boards, offices, or officers subject to its jurisdiction by law.

SEC. 2. Section 128.5 of the Business and Professions Code is amended to read:

128.5. (a) Notwithstanding any other provision of law, if at the end of any fiscal year, an agency within the Department of Consumer Affairs, except the agencies referred to in subdivision (b), has unencumbered funds in an amount which equals or is more than the agency's operating budget for the next two fiscal years, the agency shall reduce license or other fees, whether the license or other fees be fixed by statute or may be determined by the agency within limits fixed by statute, during the following fiscal year in an amount which will reduce any surplus funds of the agency to an amount less than the agency's operating budget for the next two fiscal years.

(b) Notwithstanding any other provision of law, if at the end of any fiscal year, the California Board of Architectural Examiners, the Board of Behavioral Science Examiners, the Veterinary Medical Board, the Court Reporters Board of California, the Medical Board of California, the Board of Vocational Nursing and Psychiatric Technicians, or the Bureau of Security and Investigative Services has unencumbered funds in an amount which equals or is more than the agency's operating budget for the next two fiscal years, the agency shall reduce license or other fees, whether the license or other fees be fixed by statute or may be determined by the agency within limits fixed by statute, during the following fiscal year in an amount which will reduce any surplus funds of the agency to an amount less than the agency's operating budget for the next two fiscal years.

SEC. 3. Section 130 of the Business and Professions Code is amended to read:

130. (a) Notwithstanding any other provision of law, the term of office of any member of an agency designated in subdivision (b) shall be for a term of four years expiring on June 1.

(b) Subdivision (a) applies to the following boards or committees:

(1) Medical Board of California.

(2) California Board of Podiatric Medicine.

(3) Physical Therapy Examining Committee.

(4) Board of Registered Nursing.

(5) Board of Vocational Nursing and Psychiatric Technicians.

(6) State Board of Optometry.

(7) California State Board of Pharmacy.

(8) Veterinary Medical Board.

(9) California Board of Architectural Examiners.

(10) California State Board of Landscape Architects.

(11) State Board of Barbering and Cosmetology.

(12) State Board of Registration for Professional Engineers and Land Surveyors.

(13) Contractors' State License Board.

(14) State Board of Guide Dogs for the Blind.

(15) State Board of Funeral Directors and Embalmers.

(16) Board of Behavioral Science Examiners.

(17) Structural Pest Control Board.

(18) Cemetery Board.

(19) Bureau of Electronic and Appliance Repair Advisory Board.

(20) Court Reporters Board of California.

(21) State Board of Registration for Geologists and Geophysicists.

(22) State Athletic Commission.

(23) Osteopathic Medical Board of California.

(24) The Respiratory Care Board of California.

(25) The Acupuncture Examining Committee.

(26) The Board of Psychology.

SEC. 4. Section 200.1 of the Business and Professions Code is amended to read:

200.1. (a) Any accruals that occur on or after September 11, 1993, to any funds or accounts within the Professions and Vocations Fund that realize increased revenues to that fund or account as a result of legislation enacted on or after September 11, 1993, and that have not been transferred pursuant to Sections 13.50, 13.60, and 13.70 of the Budget Act of 1993 on the effective date of the act that enacted this section, shall be exempt from the transfers contained in Sections 13.50, 13.60, and 13.70 of the Budget Act of 1993. These funds shall include, but not be limited to, all of the following:

(1) Athletic Commission Fund.

(2) Bureau of Home Furnishings and Thermal Insulation Fund.

(3) Contractors' License Fund.

(4) Private Investigator Fund.

(5) Respiratory Care Fund.
(6) Vocational Nursing and Psychiatric Technicians Fund.
(b) Subdivision (a) shall not apply to the Contingent Fund of the Medical Board of California.

SEC. 5. Section 205 of the Business and Professions Code is amended to read:

205. (a) There is in the State Treasury the Professions and Vocations Fund. The fund shall consist of the following special funds:
(1) Accountancy Fund.
(2) California Board of Architectural Examiners' Fund.
(3) Athletic Commission Fund.
(4) Board of Barbering and Cosmetology Contingent Fund.
(5) Cemetery Fund.
(6) Contractors' License Fund.
(7) State Dentistry Fund.
(8) State Funeral Directors and Embalmers' Fund.
(9) Guide Dogs for the Blind Fund.
(10) Bureau of Home Furnishings and Thermal Insulation Fund.
(11) State Board of Landscape Architects' Fund.
(12) Contingent Fund of the Medical Board of California.
(13) Optometry Fund.
(14) Pharmacy Board Contingent Fund.
(15) Physical Therapy Fund.
(16) Private Investigator Fund.
(17) Professional Engineers' and Land Surveyors' Fund.
(18) Consumer Affairs Fund.
(19) Behavioral Science Examiners Fund.
(20) Licensed Midwifery Fund.
(21) Court Reporters' Fund.
(22) Structural Pest Control Fund.
(23) Veterinary Medical Board Contingent Fund.
(24) Vocational Nurses Account of the Vocational Nursing and Psychiatric Technicians Fund.
(25) State Dental Auxiliary Fund.
(26) Electronic and Appliance Repair Fund.
(27) Geology and Geophysics Fund.
(28) Dispensing Opticians Fund.
(29) Acupuncture Fund.
(30) Hearing Aid Dispensers Fund.
(31) Physician Assistant Fund.
(32) Board of Podiatric Medicine Fund.
(33) Psychology Fund.
(34) Respiratory Care Fund.
(35) Speech-Language Pathology and Audiology Fund.
(36) Board of Registered Nursing Fund.
(37) Nursing Home Administrator's State License Examining Board Fund.

(38) Psychiatric Technician Examiners Account of the Vocational Nurse and Psychiatric Technician Examiners Fund.

(39) Animal Health Technician Examining Committee Fund.

(40) Tax Preparers Fund.

(41) Structural Pest Control Education and Enforcement Fund.

(42) Structural Pest Control Research Fund.

(b) For accounting and recordkeeping purposes, the Professions and Vocations Fund shall be deemed to be a single special fund, and each of the several special funds therein shall constitute and be deemed to be a separate account in the Professions and Vocations Fund. Each account or fund shall be available for expenditure only for the purposes as are now or may hereafter be provided by law.

SEC. 6. Section 473.15 is added to the Business and Professions Code, immediately following Section 473.1, to read:

473.15. (a) The Joint Legislative Sunset Review Committee established pursuant to Section 473 shall review the following boards established by initiative measures, as provided in this section:

(1) The State Board of Chiropractic Examiners established by an initiative measure approved by electors November 7, 1922.

(2) The Osteopathic Medical Board of California established by an initiative measure approved June 2, 1913, and acts amendatory thereto approved by electors November 7, 1922.

(b) The State Board of Chiropractic Examiners and the Osteopathic Medical Board of California shall prepare an analysis and submit a report as described in subdivisions (a) to (e), inclusive, of Section 473.2, to the Joint Legislative Sunset Review Committee on or before September 1, 1998.

(c) The Joint Legislative Sunset Review Committee shall, during the interim recess of 1998, hold public hearings to receive testimony from the Director of Consumer Affairs, the board involved, the public, and the regulated industry. In that hearing, each board shall be prepared to demonstrate a compelling public need for the continued existence of the board or regulatory program, and that its licensing function is the least restrictive regulation consistent with the public health, safety, and welfare.

(d) The Joint Legislative Sunset Review Committee shall evaluate and make determinations pursuant to Section 473.4 and shall report its findings and recommendations to the department as provided in Section 473.5.

(e) In the exercise of its inherent power to make investigations and ascertain facts to formulate public policy and determine the necessity and expediency of contemplated legislation for the protection of the public health, safety, and welfare, it is the intent of the Legislature that the State Board of Chiropractic Examiners and the Osteopathic Medical Board of California be reviewed pursuant to this section.

(f) It is not the intent of the Legislature in requiring a review under this section to amend the initiative measures that established

the State Board of Chiropractic Examiners or the Osteopathic Medical Board of California.

SEC. 6.5. Section 473.16 is added to the Business and Professions Code, immediately following Section 473.15, to read:

473.16. (a) The Joint Legislative Sunset Review Committee shall review the referral of cases to the Licensing and Health Quality Enforcement Sections of the Attorney General's office by the boards to which this division applies, the performance of the Licensing and Health Quality Enforcement Sections of the Attorney General's office, in handling the cases so referred and the reimbursement of the Attorney General for legal services by those boards. The review shall be conducted in conjunction with the Legislative Analyst's office, and in consultation with the department, the Attorney General's office, and the boards which receive services from the Licensing and Health Quality Enforcement Sections. The purpose of the performance review is to ascertain whether the referral of disciplinary cases and their handling by the Attorney General's office are being effectuated in an effective, efficient, and expeditious manner, and whether the billing practices and costs associated with individual cases, and the referring boards' practices with respect to budgeting and reimbursement of the Attorney General's costs are effective and efficient.

(b) The Joint Legislative Sunset Review Committee shall evaluate the performance review and make determinations pursuant to this section, and shall report its findings and recommendations to the Legislature by March 1, 1998.

SEC. 7. Section 473.6 is added to the Business and Professions Code, to read:

473.6. The chairpersons of the appropriate policy committees of the Legislature may refer to the Joint Legislative Sunset Review Committee any legislative issues or proposals to create new licensure categories or create a new licensing board if the issues or proposals are related to the review of a particular board pursuant to this division.

SEC. 8. Section 675 of the Business and Professions Code is amended to read:

675. Every person, firm, association, partnership, or corporation offering a course of instruction in any type of nursing, including vocational nursing or practical nursing, which course of instruction is not accredited by the Board of Registered Nursing or by the Board of Vocational Nursing and Psychiatric Technicians and completion of which will not qualify a person to take any examination given by either board shall notify an applicant for admission thereto that the course of instruction is not accredited by either board and that completion thereof will not qualify the person to take any examination given by either board.

The notice required by this section shall be in writing in at least 12-point boldface type, and in no event less than two points larger

than the type in any other portion of the notice or contract, and shall be given to an applicant prior to the signing of any contract by the applicant or, if no contract is signed, prior to the making of any deposit or other payment by the applicant.

If an applicant is required to sign a contract in order to enroll in the course of instruction, the notice required by this section shall be contained in the contract directly above the place for the applicant's signature.

SEC. 9. Section 800 of the Business and Professions Code is amended to read:

800. (a) The Medical Board of California, the Board of Dental Examiners, the Osteopathic Medical Board of California, the Board of Chiropractic Examiners, the California Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians, the State Board of Optometry, the Veterinary Medical Board, and the State Board of Pharmacy shall each separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from such board. Each central file shall be created and maintained to provide an individual historical record for each licensee with respect to (1) any conviction of a crime in this or any other state which constitutes unprofessional conduct pursuant to the reporting requirements of Section 803; (2) any judgment or settlement requiring the licensee or his or her insurer, to pay any amount of damages in excess of three thousand dollars ($3,000) for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or by rendering unauthorized professional services, pursuant to the reporting requirements of Section 801 or 802; (3) any public complaints for which provision is hereinafter made, pursuant to subdivision (b) of this section; (4) disciplinary information reported pursuant to Section 805.

(b) Each board shall prescribe and promulgate forms on which members of the public and other licensees or certificate holders may file written complaints to the board alleging any act of misconduct in, or connected with, the performance of professional services by the licensee.

If a board, or division thereof, a committee, or a panel has failed to act upon a complaint or report within five years, or has found that the complaint or report is without merit, the central file shall be purged of information relating to the complaint or report.

Notwithstanding this subdivision, the Board of Psychology and the Respiratory Care Board of California shall maintain complaints or reports as long as each board deems necessary.

(c) The contents of any central file which are not public records under any other provision of law shall be confidential except that the licensee involved, or his or her counsel or representative, shall have the right to inspect and have copies made of his or her complete file except for the provision that may disclose the identity of an

information source. For the purposes of this section, a board may protect an information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material. Whichever method is used, the board shall ensure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to a licensee's reputation, rights, benefits, privileges, or qualifications, or be used by a board to make a determination that would affect a licensee's rights, benefits, privileges, or qualifications.

The licensee may, but is not required to, submit any additional exculpatory or explanatory statement or other information which the board shall include in the central file.

Each board may permit any law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes to inspect and have copies made of that licensee's file, unless the disclosure is otherwise prohibited by law.

These disclosures shall effect no change in the confidential status of these records.

SEC. 10. Section 1242.6 of the Business and Professions Code is amended to read:

1242.6. (a) Any registered nurse licensed under the provisions of Chapter 6 (commencing with Section 2700) of Division 2 may perform arterial puncture, venipuncture, or skin puncture for the purposes of withdrawing blood or for test purposes upon authorization from any licensed physician and surgeon or any licensed dentist.

(b) Any licensed vocational nurse licensed under the provisions of Chapter 6.5 (commencing with Section 2840) of Division 2 may perform arterial puncture, venipuncture, or skin puncture for the purposes of withdrawing blood or for test purposes upon authorization from any licensed physician and surgeon, or any licensed dentist if prior thereto the licensed vocational nurse has been instructed by a physician and surgeon and has demonstrated competence to the physician and surgeon in the proper procedure to be employed when withdrawing blood, or has satisfactorily completed a prescribed course of instruction approved by the Board of Vocational Nursing and Psychiatric Technicians or has demonstrated competence to the satisfaction of that board.

(c) Any respiratory care practitioner certified under the provisions of Chapter 8.3 (commencing with Section 3700) of Division 2 may perform arterial puncture, venipuncture, or skin puncture for the purposes of withdrawing blood or for test purposes upon authorization from any licensed physician and surgeon.

SEC. 11. Section 1680 of the Business and Professions Code is amended to read:

1680. Unprofessional conduct by a person licensed under this chapter is defined as, but is not limited to, the violation of any one of the following:

(a) The obtaining of any fee by fraud or misrepresentation.

(b) The employment directly or indirectly of any student or suspended or unlicensed dentist to practice dentistry as defined in this chapter.

(c) The aiding or abetting of any unlicensed person to practice dentistry.

(d) The aiding or abetting of a licensed person to practice dentistry unlawfully.

(e) The committing of any act or acts of gross immorality substantially related to the practice of dentistry.

(f) The use of any false, assumed, or fictitious name, either as an individual, firm, corporation, or otherwise, or any name other than the name under which he or she is licensed to practice, in advertising or in any other manner indicating that he or she is practicing or will practice dentistry, except that name as is specified in a valid permit issued pursuant to Section 1701.5.

(g) The practice of accepting or receiving any commission or the rebating in any form or manner of fees for professional services, radiograms, prescriptions, or other services or articles supplied to patients.

(h) The making use by the licentiate or any agent of the licentiate of any advertising statements of a character tending to deceive or mislead the public.

(i) The advertising of either professional superiority or the advertising of performance of professional services in a superior manner. This subdivision shall not prohibit advertising permitted by subdivision (h) of Section 651.

(j) The employing or the making use of solicitors.

(k) The advertising in violation of Section 651.

(*l*) The advertising to guarantee any dental service, or to perform any dental operation painlessly. This subdivision shall not prohibit advertising permitted by Section 651.

(m) The violation of any of the provisions of law regulating the procurement, dispensing, or administration of dangerous drugs, as defined in Article 7 (commencing with Section 4211) of Chapter 9, or controlled substances, as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code.

(n) The violation of any of the provisions of this division.

(o) The permitting of any person to operate dental radiographic equipment who has not met the requirements of Section 1656.

(p) The clearly excessive prescribing or administering of drugs or treatment, or the clearly excessive use of diagnostic procedures, or the clearly excessive use of diagnostic or treatment facilities, as determined by the customary practice and standards of the dental profession.

Any person who violates this subdivision is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) or more than six hundred dollars ($600), or by imprisonment for a term of not less than 60 days or more than 180 days, or by both a fine and imprisonment.

(q) The use of threats or harassment against any patient or licentiate for providing evidence in any possible or actual disciplinary action, or other legal action; or the discharge of an employee primarily based on the employee's attempt to comply with the provisions of this chapter or to aid in the compliance.

(r) Suspension or revocation of a license issued, or discipline imposed, by another state or territory on grounds which would be the basis of discipline in this state.

(s) The alteration of a patient's record with intent to deceive.

(t) Unsanitary or unsafe office conditions, as determined by the customary practice and standards of the dental profession.

(u) The abandonment of the patient by the licentiate, without written notice to the patient that treatment is to be discontinued and before the patient has ample opportunity to secure the services of another dentist and provided the health of the patient is not jeopardized.

(v) The willful misrepresentation of facts relating to a disciplinary action to the patients of a disciplined licentiate.

(w) Use of fraud in the procurement of any license issued pursuant to this chapter.

(x) Any action or conduct which would have warranted the denial of the license.

(y) The aiding or abetting of a licensed dentist or dental auxiliary to practice dentistry in a negligent or incompetent manner.

(z) The failure to report to the board in writing within seven days either: (1) the death of his or her patient during the performance of any dental procedure; or, (2) the discovery of the death of a patient whose death is causally related to a dental procedure performed by him or her.

(aa) Participating in or operating any group advertising and referral services which is in violation of Section 650.2.

(bb) The failure to use a fail-safe machine with an appropriate exhaust system in the administration of nitrous oxide. The board shall, by regulation, define what constitutes a fail-safe machine.

(cc) Engaging in the practice of dentistry with an expired license.

(dd) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from dentist or dental auxiliary to patient, from patient to patient, and from patient to dentist or dental auxiliary. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and

Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300), Division 5, Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the California Medical Board, the Board of Podiatric Medicine, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licentiates and others regulated by the board are informed of the responsibility of licentiates and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

(ee) The utilization by a licensed dentist of any person to perform the functions of a registered dental assistant, registered dental assistant in extended functions, registered dental hygienist, or registered dental hygienist in extended functions who, at the time of initial employment, does not possess a current, valid license to perform those functions.

SEC. 12. Section 2071 of the Business and Professions Code is amended to read:

2071. The Division of Licensing shall adopt and administer regulations that establish standards for technical supportive services that may be performed by a medical assistant. Nothing in this section shall prohibit the board or division from amending or repealing regulations covering medical assistants. The board or division shall, prior to the adoption of any regulations, request recommendations regarding these standards from appropriate public agencies, including, but not limited to, the State Board of Optometry, the Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians, the Laboratory Field Services division of the State Department of Health Services, those divisions of the State Department of Education that pertain to private postsecondary education and career and vocational preparation, the Chancellor of the California Community Colleges, the California Board of Podiatric Medicine, the Physician Assistant Examining Committee, and the Physical Therapy Examining Committee. The Division of Licensing shall also request recommendations regarding these standards from associations of medical assistants, physicians, nurses, doctors of podiatric medicine, physician assistants, physical therapists, laboratory technologists, optometrists, and others as the board or division finds appropriate, including, but not limited to, the California Optometric Association, the California Nurses Association, the California Medical Association, the California Society of Medical Assistants, the California Medical Assistants' Association, and the California Chapter of the American Physical Therapy Association. Nothing in this section shall be construed to supersede or modify that

portion of the Administrative Procedure Act which relates to the procedure for the adoption of regulations and which is set forth in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 13. Section 2221.1 of the Business and Professions Code is amended to read:

2221.1. (a) The board and the Board of Podiatric Medicine shall investigate and may take disciplinary action, including, but not limited to, revocation or suspension of licenses, against physicians and surgeons and all others licensed or regulated by the board, or by the Board of Podiatric Medicine, whichever is applicable, who, except for good cause, knowingly fail to protect patients by failing to follow infection control guidelines of the applicable board, thereby risking transmission of blood-borne infectious diseases from the physician and surgeon or other health care provider licensed or regulated by the applicable board to patients, from patients, and from patient to physician and surgeon or other health care provider regulated by the applicable board. In so doing, the boards shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300), Division 5, Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board and the Board of Podiatric Medicine shall consult with the Board of Dental Examiners, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this section.

(b) The board shall seek to ensure that licentiates and others regulated by the board are informed of the responsibility of licentiates to follow infection control guidelines and of the most recent scientifically recognized safeguards for minimizing the transmission of blood-borne infectious diseases.

SEC. 14. Section 2660 of the Business and Professions Code is amended to read:

2660. The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon, or issue subject to terms and conditions any license, certificate, or approval issued under this chapter for any of the following causes:

(a) Advertising in violation of Section 17500.

(b) Fraud in the procurement of any license under this chapter.

(c) Procuring or aiding or offering to procure or aid in criminal abortion.

(d) Conviction of a crime which substantially relates to the qualifications, functions, or duties of a physical therapist. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.

(e) Impersonating or acting as a proxy for an applicant in any examination given under this chapter.

(f) Habitual intemperance.

(g) Addiction to the excessive use of any habit-forming drug.

(h) Gross negligence in his or her practice as a physical therapist.

(i) Conviction of a violation of any of the provisions of this chapter or of the State Medical Practice Act, or 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 chapter or of the State Medical Practice Act.

(j) The aiding or abetting of any person to violate this chapter or any regulations duly adopted under this chapter.

(k) The aiding or abetting of any person to engage in the unlawful practice of physical therapy.

(*l*) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a physical therapist.

(m) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the California Board of Podiatric Medicine, the Board of Dental Examiners of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

SEC. 15. Section 2701 of the Business and Professions Code is amended to read:

2701. There is in the Department of Consumer Affairs the Board of Registered Nursing consisting of nine members.

Within the meaning of this chapter, board, or the board, refers to the Board of Registered Nursing. Any reference in state law to the Board of Nurse Examiners of the State of California or California Board of Nursing Education and Nurse Registration shall be construed to refer to the Board of Registered Nursing.

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. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 16. Section 2708 of the Business and Professions Code is amended to read:

2708. The board shall appoint an executive officer who shall perform the duties delegated by the board and who shall be responsible to it for the accomplishment of those duties.

The executive officer shall be a nurse currently licensed under this chapter and shall possess other qualifications as determined by the board.

The executive officer shall not be a member of the board.

This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 17. Section 2761 of the Business and Professions Code is amended to read:

2761. The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

(2) A conviction of practicing medicine without a license in violation of Chapter 5 (commencing with Section 2000), in which event the record of conviction shall be conclusive evidence thereof.

(3) The use of advertising relating to nursing which violates Section 17500.

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

(b) Procuring his or her certificate or license by fraud, misrepresentation, or mistake.

(c) Procuring, or aiding, or abetting, or attempting, or agreeing, or offering to procure or assist at a criminal abortion.

(d) 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 chapter or regulations adopted pursuant to it.

(e) Making or giving any false statement or information in connection with the application for issuance of a certificate or license.

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

(g) Impersonating any applicant or acting as proxy for an applicant in any examination required under this chapter for the issuance of a certificate or license.

(h) Impersonating another certified or licensed practitioner, or permitting or allowing another person to use his or her certificate or license for the purpose of nursing the sick or afflicted.

(i) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of, or arranging for, a violation of any of the provisions of Article 12 (commencing with Section 2221) of Chapter 5.

(j) Holding oneself out to the public or to any practitioner of the healing arts as a "nurse practitioner" or as meeting the standards established by the board for a nurse practitioner unless meeting the standards established by the board pursuant to Article 8 (commencing with Section 2834) or holding oneself out to the public as being certified by the board as a nurse anesthetist, nurse midwife, or public health nurse unless the person is at the time so certified by the board.

(k) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensed or certified nurse to patient, from patient to patient, and from patient to licensed or certified nurse. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300), Division 5, Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the Board of Podiatric Medicine, the Board of Dental Examiners, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licentiates and others regulated by the board are informed of the responsibility of licentiates to minimize the risk of transmission of blood-borne infectious diseases

from health care provider to patient, from patient to patient, and from patient to health care provider, and of the most recent scientifically recognized safeguards for minimizing the risks of transmission.

SEC. 18. Section 2841 of the Business and Professions Code is amended to read:

2841. There is in the Department of Consumer Affairs a Board of Vocational Nursing and Psychiatric Technicians of the State of California, consisting of 11 members.

Within the meaning of this chapter, board, or the board, refers to the Board of Vocational Nursing and Psychiatric Technicians of the State of California.

This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, which 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. 19. Section 2842 of the Business and Professions Code is amended to read:

2842. (a) Each member of the board shall be a citizen of the United States and a resident of the State of California. The board shall have the following composition:

(1) Two members shall be duly licensed vocational nurses who have been licensed for a period of not less than three years prior to appointment.

(2) Two members shall be licensed psychiatric technicians, each of whom shall have had not less than five years' experience in a psychiatric hospital, or in a psychiatric unit of a hospital licensed by the State Department of Health Services, or a private institution licensed by the State Department of Health Services.

(3) One member shall be a licensed vocational nurse or registered nurse who shall have had not less than five years' experience as a teacher or administrator in an accredited school of vocational nursing.

(4) Six members shall be public members who are not licentiates of the board or any other board under this division or of any board referred to in Sections 1000 and 3600.

(b) No person may serve as a member of the board for more than two consecutive terms.

(c) Per diem and expenses of members of the board who are licensed psychiatric technicians shall be paid solely from revenues received pursuant to Chapter 10 (commencing with Section 4500) of Division 2.

SEC. 20. Section 2847 of the Business and Professions Code is amended to read:

2847. (a) The board shall select an executive officer who shall perform duties as are delegated by the board and who shall be responsible to it for the accomplishment of those duties.

(b) The person selected to be the executive officer of the board shall be a duly licensed vocational nurse under this chapter, a duly licensed professional nurse as defined in Section 2725, or a duly licensed psychiatric technician. The executive officer shall not be a member of the board.

(c) With the approval of the Director of Finance, the board shall fix the salary of the executive officer.

(d) The executive officer shall be entitled to traveling and other necessary expenses in the performance of his or her duties. He or she shall make a statement, certified before some duly authorized person, that the expenses have been actually incurred.

(e) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 21. Section 2873.6 of the Business and Professions Code is amended to read:

2873.6. (a) Any person who on the effective date of this section is employed as a medical technical assistant or as a senior medical technical assistant by the Department of Corrections or the Department of the Youth Authority, who served on active duty in the medical corps of any of the armed forces of the United States or who served in the United States Public Health Service, in which no less than an aggregate of 12 months was spent in rendering patient care, who completed the basic course of instruction in nursing required by the United States Public Health Service, or by his or her particular branch of the armed forces, and who was honorably discharged therefrom, shall be granted an employment restricted license upon proof that he or she possesses the necessary qualifications of this section as set forth in his or her service and discharge records. An employment restricted license issued pursuant to this subdivision shall authorize the holder thereof to practice vocational nursing only within a facility of the Department of Corrections or the Department of the Youth Authority and shall be valid only for the period of employment. In order to obtain a nonrestricted license as a vocational nurse, a medical technical assistant shall apply and take the examination as required and normally administered by the Board of Vocational Nursing and Psychiatric Technicians.

(b) On and after the effective date of this section, no person shall be appointed as a medical technical assistant by the Department of Corrections or the Department of the Youth Authority unless the person complies with one of the following:

(1) Is a licensed vocational nurse or a registered nurse.

(2) Has served on active duty in the medical corps of any of the armed forces of the United States or who served in the United States

Public Health Service, in which no less than an aggregate of 12 months was spent in rendering patient care, who completed the basic course of instruction in nursing required by the United States Public Health Service, or by his or her particular branch of the armed forces, and who has been honorably discharged therefrom. The Department of Corrections and the Department of the Youth Authority are authorized only to hire persons who are eligible for licensure, and as a condition of employment shall require that those persons obtain a license as a vocational nurse within six months of employment. He or she shall be supervised by a registered nurse or physician and surgeon and shall not administer medications until licensed.

(c) Notwithstanding subdivision (a), any person who was granted a restricted vocational nurse's license pursuant to that subdivision and who was employed in the psychiatric unit of the California Medical Facility at the time of the unit's transfer from the Department of Corrections to the State Department of Mental Health on July 1, 1988, shall continue to hold his or her license.

SEC. 22. Section 2873.7 of the Business and Professions Code is amended to read:

2873.7. The Department of Corrections and the Department of the Youth Authority shall jointly study, in consultation with the Board of Registered Nurses, the Board of Vocational Nursing and Psychiatric Technicians, the State Department of Health Services, the Emergency Medical Services Authority, and the professional associations representing registered nurses, medical technical assistants, licensed vocational nurses, and emergency medical technicians, the difficulties in recruitment and retention of medical technical assistants and registered nurses.

The study shall be completed on or before January 1, 1989.

SEC. 23. Section 2881 of the Business and Professions Code is amended to read:

2881. An accredited school of vocational nursing is one which has been approved by the Board of Vocational Nursing and Psychiatric Technicians, gives a course of instruction in vocational nursing of not less than 1530 hours or 50 semester units approved by the board pursuant to Section 2882 whether the same be established by the State Board of Education, other educational institutions, or other public or private agencies or institutions and is affiliated or conducted in connection with one or more hospitals.

One hour of instruction for purposes of computing the total hours of instruction or for calculating semester units as specified in this section shall consist of not less than 50 minutes of actual class time.

SEC. 24. Section 2890 of the Business and Professions Code is amended to read:

2890. The Vocational Nursing and Psychiatric Technicians Fund is hereby created in the State Treasury.

SEC. 25. Section 2893 of the Business and Professions Code is amended to read:

2893. At least once in every calendar month, the board shall furnish the Controller a detailed statement of all moneys collected by the board under this chapter or from any other source, and, at the same time, shall pay the amount thereof to the Treasurer. On order of the Controller, the amount so paid shall be deposited in the State Treasury to the credit of the Vocational Nursing and Psychiatric Technicians Fund.

SEC. 25.5. Section 2894 of the Business and Professions Code is amended to read:

2894. All money in the Vocational Nursing and Psychiatric Technicians Fund is hereby continuously appropriated to the Board of Vocational Nursing and Psychiatric Technicians, without regard to fiscal years, for expenditure in carrying out the provisions of this chapter, including the promotion of nursing education in this state, and for the refund, in accordance with law, of license fees or other moneys paid into the Vocational Nursing and Psychiatric Technicians Fund under the provisions of this chapter.

Claims against the Vocational Nursing and Psychiatric Technicians Fund shall be audited by the Controller, and shall be paid by the Treasurer upon warrants drawn by the Controller.

SEC. 26. Section 3527 of the Business and Professions Code is amended to read:

3527. (a) The committee may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon a physician's assistant license after a hearing as required in Section 3528 for unprofessional conduct which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the committee or the board.

(b) The committee may order the denial of an application for, or the suspension or revocation of, or the imposition of probationary conditions upon, an approved program after a hearing as required in Section 3528 for a violation of this chapter or the regulations adopted pursuant thereto.

(c) The board may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon, an approval to supervise a physician's assistant, after a hearing as required in Section 3528, for unprofessional conduct, which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the committee or the board.

(d) Notwithstanding subdivision (c), the Division of Medical Quality of the Medical Board of California, in conjunction with an action it has commenced against a physician and surgeon, may, in its own discretion and without the concurrence of the board, order the suspension or revocation of, or the imposition of probationary

conditions upon, an approval to supervise a physician's assistant, after a hearing as required in Section 3528, for unprofessional conduct, which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the committee or the board.

(e) The committee may order the denial of an application for, or the suspension or revocation of, or the imposition of probationary conditions upon, a physician's assistant license, after a hearing as required in Section 3528 for unprofessional conduct which includes, except for good cause, the knowing failure of a licensee to protect patients by failing to follow infection control guidelines of the committee, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the committee shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the committee shall consult with the California Medical Board, the Board of Podiatric Medicine, the Board of Dental Examiners, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

The committee shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

SEC. 27. Section 3750 of the Business and Professions Code is amended to read:

3750. The board may order the suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

(a) Advertising in violation of Section 651 or Section 17500.

(b) Fraud in the procurement of any license under this chapter.

(c) Knowingly employing unlicensed persons who present themselves as licensed respiratory care practitioners.

(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

(e) Impersonating or acting as a proxy for an applicant in any examination given under this chapter.

(f) Negligence in his or her practice as a respiratory care practitioner.

(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or 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 any provision of Division 2 (commencing with Section 500).

(h) The aiding or abetting of any person to violate this chapter or any regulations duly adopted under this chapter.

(i) The aiding or abetting of any person to engage in the unlawful practice of respiratory care.

(j) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a respiratory care practitioner.

(k) Falsifying, or making grossly incorrect, grossly inconsistent, or unintelligible entries in any patient, hospital, or other record.

(*l*) Changing the prescription of a physician and surgeon, or falsifying verbal or written orders for treatment or a diagnostic regime received, whether or not that action resulted in actual patient harm.

(m) Denial, suspension, or revocation of any license to practice by another agency, state, or territory of the United States for any act or omission that would constitute grounds for the denial, suspension, or revocation of a license in this state.

(n) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the California Medical Board, the Board of Podiatric Medicine, the Board of Dental Examiners, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

SEC. 28.3. Section 4001 of the Business and Professions Code is amended to read:

4001. (a) There is in the Department of Consumer Affairs a Board of Pharmacy of the State of California 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 licentiates of the board or of any other board under this division or of 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) Each member shall receive one per diem for the rating of each 20 examination papers or fraction thereof.

(g) 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. 28.5. 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. 28.7. 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.

(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. 28.9. 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. 29. 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 members of the board and inspectors of pharmacy, whether the inspectors are employed by the board or are in the department's Division of Investigation, may inspect, during business hours, all pharmacies, medical device retailers, dispensaries, stores, or places in which drugs are compounded, dispensed, or sold. Any board inspector of pharmacy whose principal duties include either (1) the inspection and investigation of pharmacies or pharmacists for alleged violations of this act, 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) (1) The supervising pharmacy inspector and 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, the violation of which is declared to be a public offense. 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.

(c) 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.

(d) Any inspector may serve all processes and notices throughout the state.

SEC. 30. 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 act, 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. 31. Section 4501 of the Business and Professions Code is amended to read:

4501. (a) "Board," as used in this chapter, means the Board of Vocational Nursing and Psychiatric Technicians.

(b) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 32. Section 4503 of the Business and Professions Code is amended to read:

4503. (a) The board shall administer and enforce this chapter.

(b) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 32.5. Section 4546 of the Business and Professions Code is amended to read:

4546. The board shall report each month to the Controller the amount and source of all revenue received by it pursuant to this chapter and at the same time pay the entire amount thereof into the State Treasury for credit to the Vocational Nursing and Psychiatric Technicians Fund. The board shall not maintain a reserve balance

greater than three months of the appropriated operating expenditures of the board in any fiscal year.

SEC. 32.6. Section 4547 of the Business and Professions Code is amended to read:

4547. All expenses incurred in the operation of this chapter shall be paid out of the Vocational Nursing and Psychiatric Technicians Fund from the revenue received by the board under this chapter and deposited in the Vocational Nursing and Psychiatric Technicians Fund. No part of the expenses shall be charged against any funds which are derived from any functions of the board provided for in other chapters of this code.

SEC. 33. Section 4800 of the Business and Professions Code is amended to read:

4800. There is in the Department of Consumer Affairs a Veterinary Medical Board in which the administration of this chapter is vested. The board consists of seven members, three of whom shall be public members.

This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, which 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 provided for by Division 1.2 (commencing with Section 473).

SEC. 34. Section 4804.5 of the Business and Professions Code is amended to read:

4804.5. The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 35. Section 4832 is added to the Business and Professions Code, to read:

4832. (a) The board shall establish an advisory committee on issues pertaining to the practice of veterinary technicians, known as the Registered Veterinary Technician Committee, hereafter referred to as the committee.

(b) This section shall become operative on July 1, 1998.

SEC. 35.1. Section 4833 of the Business and Professions Code is amended to read:

4833. (a) The examining committee shall assist the board in the examination of applicants for veterinary technician registration. The examination shall be held at least once a year at the times and places designated by the board.

(b) As directed by the board, the examining committee may investigate and evaluate each applicant applying for registration as

a registered veterinary technician and may recommend to the board for final determination the admission of the applicant to the examination and eligibility for registration.

(c) The examining committee shall make recommendations to the board regarding the establishment and operation of the continuing education requirements authorized by Section 4838 of this article.

(d) The examining committee shall assist the board in the inspection and approval of all schools or institutions offering a curriculum for training registered veterinary technicians.

(e) This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 35.2. Section 4833 is added to the Business and Professions Code, to read:

4833. (a) The committee may assist the board in the examination of applicants for veterinary technician registration. The examination shall be held at least once a year at the times and places designated by the board.

(b) As directed by the board, the committee may investigate and evaluate each applicant applying for registration as a registered veterinary technician and may recommend to the board for final determination the admission of the applicant to the examination and eligibility for registration.

(c) The committee may make recommendations to the board regarding the establishment and operation of the continuing education requirements authorized by Section 4838 of this article.

(d) The committee may assist the board in the inspection and approval of all schools or institutions offering a curriculum for training registered veterinary technicians.

(e) This section shall become operative on July 1, 1998.

SEC. 35.3. Section 4834 of the Business and Professions Code is amended to read:

4834. (a) The board has the power to remove from office at any time any member of the examining committee for continued neglect of any duty required by this article, for incompetency, or for unprofessional conduct.

(b) This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 35.4. Section 4834 is added to the Business and Professions Code, to read:

4834. (a) The board has the power to remove from office at any time any member of the committee for continued neglect of any duty required by this article, for incompetency, or for unprofessional conduct.

(b) This section shall become operative on July 1, 1998.

SEC. 35.5. Section 4835 of the Business and Professions Code is amended to read:

4835. (a) Each member of the examining committee shall receive a per diem and expenses, as provided in Section 103.

(b) This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 35.6. Section 4835 is added to the Business and Professions Code, to read:

4835. (a) Each member of the committee shall receive a per diem and expenses, as provided in Section 103.

(b) This section shall become operative on July 1, 1998.

SEC. 36. Section 4842.2 of the Business and Professions Code is amended to read:

4842.2. (a) The board shall certify to the State Controller at the beginning of each month for the month preceding, the amount and source of all revenue received by it pursuant to this chapter, and shall pay the entire amount thereof to the State Treasurer for deposit in the Registered Veterinary Technician Examining Committee Fund, which fund is hereby created and is continuously appropriated to carry out the purposes of this chapter.

(b) This section shall become inoperative July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 37. Section 4842.2 is added to the Business and Professions Code, to read:

(a) Commencing July 1, 1998, all funds collected by the board under this article shall be deposited in the Veterinary Medical Board Contingent Fund.

(b) All unappropriated funds existing in the Registered Veterinary Technician Examining Committee Fund on July 1, 1998, shall be transferred to the Veterinary Medical Board Contingent Fund.

(c) This section shall become operative July 1, 1998.

SEC. 38. Section 4848 of the Business and Professions Code is amended to read:

4848. (a) (1) The board shall, by means of examination, ascertain the professional qualifications of all applicants for licenses to practice veterinary medicine in this state and shall issue a license to every person whom it finds to be qualified. No license shall be issued to anyone who has not demonstrated his or her competency by examination.

(2) The examination shall consist of both of the following:

(A) A licensing examination consisting of both of the following:

(i) An examination in basic veterinary science.

(ii) An examination of clinical competency.

(B) A California state board examination. The examinations may be given at the same time or at different times as determined by the board. For examination purposes, the board may make contractual arrangements on a sole source basis with organizations furnishing examination material as it may deem desirable and shall be exempt from Section 10115 of the Public Contract Code.

(3) The licensing examination may be waived by the board in any case in which it determines that the applicant has taken and passed an examination for licensure in another state substantially equivalent in scope and subject matter to the licensing examination last given in California before the determination is made, and has achieved a score on the out-of-state examination at least equal to the score required to pass the licensing examination administered in California.

(4) Nothing in this chapter shall preclude the board from permitting a person who has completed a portion of his or her educational program, as determined by the board, in a veterinary college, recognized by the board under Section 4846, to take any examination or any part thereof prior to satisfying the requirements for application for a license established by Section 4846.

(b) The board may waive the examination requirements of subdivision (a), and issue a license to an applicant to practice veterinary medicine, if the applicant meets all of the following requirements and would not be denied issuance of a license by any other provision of this code:

(1) The applicant is licensed in one or more other states in which the board has determined that he or she has taken and passed a licensing examination, and a written practical or written practice examination, equivalent in scope and subject matter to the California state board examination.

(2) The applicant has been lawfully and continuously engaged in the practice of veterinary medicine for four years or more in one or more states immediately preceding filing his or her application for licensure in this state.

(3) The applicant has graduated from a veterinary college recognized by the board under Section 4846. In the case of an applicant who is not a graduate of a veterinary college recognized by the board, he or she shall possess a certificate issued by the Educational Commission for Foreign Veterinary Graduates.

(4) The board determines that no disciplinary action has been taken against the applicant by any public agency concerned with the practice of veterinary medicine and that the applicant has not been the subject of adverse judgments resulting from the practice of veterinary medicine which the board determines constitutes evidence of a pattern of incompetence or negligence.

(5) The applicant passes a practicing veterinarian examination administered by the board or a committee or organization authorized

by the board. It may be oral or practical or clinical in nature and full consideration shall be given to the duration and character of the applicant's practice.

SEC. 39. Section 4905 of the Business and Professions Code is amended to read:

4905. The following fees shall be collected by the board and shall be credited to the Veterinary Medical Board Contingent Fund:

(a) The fee for filing an application for examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, but not to exceed one hundred dollars ($100).

(b) The fee for the licensing examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed three hundred twenty-five dollars ($325).

(c) The fee for the California state board examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed one hundred fifty dollars ($150).

(d) The initial license fee shall be set by the board at not more than two hundred fifty dollars ($250) except that, if the license is issued less than one year before the date on which it will expire, then the fee shall be set by the board at not more than one hundred twenty-five dollars ($125). The board may, by appropriate regulation, provide for the waiver or refund of the initial license fee where the license is issued less than 45 days before the date on which it will expire.

(e) The renewal fee shall be set by the board for each biennial renewal period in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, but not to exceed two hundred fifty dollars ($250).

(f) The delinquency fee shall not exceed twenty-five dollars ($25).

(g) The fee for issuance of a duplicate license is ten dollars ($10).

(h) The board may make a charge for records, transcripts, and other official documents pertaining to the affairs of the board.

(i) The fee for failure to report a change in the mailing address is fifteen dollars ($15).

(j) The initial and annual renewal fees for registration of veterinary premises shall be set by the board in an amount not to exceed one hundred dollars ($100) annually.

(k) If the money transferred from the Veterinary Medical Board Contingent Fund to the General Fund pursuant to the Budget Act of 1991 is redeposited into the Veterinary Medical Board Contingent Fund, the fees assessed by the board shall be reduced correspondingly. However, the reduction shall not be so great as to cause the Veterinary Medical Board Contingent Fund to have a reserve of less than three months of annual authorized board expenditures. The fees set by the board shall not result in a

Veterinary Medical Board Contingent Fund reserve of more than 10 months of annual authorized board expenditures.

SEC. 40. Section 4955 of the Business and Professions Code is amended to read:

4955. The committee may deny, suspend, or revoke, or impose probationary conditions upon, the license of any acupuncturist if he or she is guilty of unprofessional conduct which has endangered or is likely to endanger the health, safety, or welfare of the public.

Unprofessional conduct shall include the following:

(a) Securing a license by fraud or deceit.

(b) Committing a fraudulent or dishonest act as an acupuncturist resulting in substantial injury to another.

(c) Using any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug or alcoholic beverage to an extent or in a manner dangerous to himself or herself, or to any other person, or to the public, and to an extent that the use impairs his or her ability to engage in the practice of acupuncture with safety to the public.

(d) Conviction of a crime substantially related to the qualifications, functions, or duties of an acupuncturist, the record of conviction being conclusive evidence thereof.

(e) Improper advertising.

(f) Violating or conspiring to violate the terms of this chapter.

(g) Gross negligence.

(h) Repeated negligent acts.

(i) Incompetence.

(j) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the committee, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the committee shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the committee shall consult with the Medical Board of California, the California Board of Podiatric Medicine, the Board of Dental Examiners of the State of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

The committee shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized

safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

SEC. 41. Section 5510 of the Business and Professions Code is amended to read:

5510. There is in the Department of Consumer Affairs a California Board of Architectural Examiners which consists of 10 members.

This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, which 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. 42. Section 5517 of the Business and Professions Code is amended to read:

5517. The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 43. Section 5526 of the Business and Professions Code is amended to read:

5526. (a) The board shall adopt rules and regulations governing the examination of applicants for licenses to practice architecture in this state.

(b) The board may, by rule or regulation, adopt rules of professional conduct that are not inconsistent with state or federal law. Every person who holds a license issued by the board shall be governed and controlled by these rules.

(c) The board may adopt other rules and regulations as may be necessary and proper.

(d) The board may, from time to time, repeal, amend, or modify rules and regulations adopted under this section. No rule or regulation shall be inconsistent with this chapter.

(e) The board shall adopt, by regulation, a system as described in Section 125.9 for the issuance to a licensee of a citation and a system as described in Section 148 for the issuance of an administrative citation to an unlicensed person who is acting in the capacity of a licensee or registrant under the jurisdiction of the board.

(f) The adoption, repeal, amendment, or modification of these rules and regulations shall be made in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 44. Section 5536.27 of the Business and Professions Code is amended to read:

5536.27. (a) An architect who voluntarily, without compensation or expectation of compensation, provides structural inspection services at the scene of a declared national, state, or local emergency caused by a major earthquake, flood, riot, or fire at the request of a public official, public safety officer, or city or county building inspector acting in an official capacity shall not be liable in negligence for any personal injury, wrongful death, or property damage caused by the architect's good faith but negligent inspection of a structure used for human habitation or a structure owned by a public entity for structural integrity or nonstructural elements affecting life and safety.

The immunity provided by this section shall apply only for an inspection that occurs within 30 days of the declared emergency.

Nothing in this section shall provide immunity for gross negligence or willful misconduct.

(b) As used in this section:

(1) "Architect" has the meaning given by Section 5500.

(2) "Public safety officer" has the meaning given in Section 3301 of the Government Code.

(3) "Public official" means a state or local elected officer.

SEC. 45. Section 5566 of the Business and Professions Code is amended to read:

5566. (a) If, upon completion of an investigation, the executive officer has probable cause to believe that a licensee or an unlicensed individual acting in the capacity of an architect has violated provisions of this chapter, he or she may issue a citation to the licensee or individual, as provided in this section. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of this chapter alleged to have been violated. In addition, each citation may contain an assessment of a civil penalty. The citation shall be served upon the licensee or unlicensed individual personally or through registered mail. Before any citation may be issued, the executive officer shall submit the alleged violation for review and investigation to at least one designee of the board who is a certificate holder or a staff architect. The review shall include attempts to contact the licensee or unlicensed individual to discuss and resolve the alleged violation. Upon conclusion of the board designee's review, the designee shall prepare a finding of fact and a recommendation. If the board designee concludes that probable cause exists that a licensee or unlicensed individual has violated any provisions of this chapter, a citation shall be issued to the licensee or unlicensed individual.

(b) This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 46. Section 5566.1 of the Business and Professions Code is amended to read:

5566.1. (a) The board shall promulgate regulations covering the assessment of civil penalties under this article which give due consideration to the appropriateness of the penalty with respect to the following factors:

(1) The gravity of the violation.

(2) The good faith of the individual being charged.

(3) The history of previous violations.

(b) In no event shall the civil penalty for each violation listed in the citation issued be assessed in an amount greater than two thousand dollars ($2,000).

(c) This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 47. Section 5566.2 of the Business and Professions Code is amended to read:

5566.2. (a) If a licensee or an unlicensed individual desires to contest a citation or the proposed assessment of a civil penalty therefor, he or she shall, within 10 business days after service of the citation, notify the executive officer in writing of his or her request for an informal conference with the executive officer or his or her designee. The executive officer or his or her designee shall hold, within 60 days from the receipt of the request, an informal conference. At the conclusion of the informal conference the executive officer may affirm, modify, or dismiss the citation or proposed assessment of a civil penalty, and he or she shall state with particularity in writing his or her reasons for the action, and shall immediately transmit a copy thereof to the board, the licensee or unlicensed individuals, and the person who submitted the verified complaint. If the licensee or unlicensed individual desires to contest a decision made after the informal conference, he or she shall inform the executive officer in writing within five business days after he or she receives the decision resulting from the informal conference.

If the licensee or unlicensed individual fails to notify the executive officer in writing that he or she intends to contest the citation or the proposed assessment of a civil penalty therefor or the decision made after an informal conference within the time specified in this subdivision, the citation or the proposed assessment of a civil penalty or the decision made after an informal conference shall be deemed a final order of the board and shall not be subject to further administrative review.

(b) A licensee or an unlicensed individual may, in lieu of contesting a citation pursuant to this section, transmit to the board the amount assessed in the citation as a civil penalty, within 10 business days after service of the citation.

(c) If a licensee or an unlicensed individual has notified the executive officer in a timely manner that he or she intends to contest the decision made after the informal conference, the executive

officer shall arrange a hearing before the board. After the hearing, the board shall issue a decision, based on findings of fact, affirming, modifying, or vacating the citation, or directing other appropriate relief which shall include, but need not be limited to, a notice that the failure of a licensee or unlicensed individual to comply with any provision of the board's decision constitutes grounds for suspension, or denial of licensure, or both. The proceedings under this section shall be conducted in accordance with the provisions of 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.

(d) After the exhaustion of the review procedures provided for in this section, the board may apply to the appropriate superior court for a judgment in the amount of the civil penalty and an order compelling the cited person to comply with the order of abatement. The application, which shall include a certified copy of the final order of the board, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

(e) Failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.

(f) Any civil penalties received under this chapter shall be deposited in the California Board of Architectural Examiners Fund.

(g) This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 48. Section 8520 of the Business and Professions Code is amended to read:

8520. (a) There is in the Department of Consumer Affairs a Structural Pest Control Board, which consists of seven members.

(b) Subject to the jurisdiction conferred upon the director by Division 1 (commencing with Section 100) of this code, the board is vested with the power to and shall administer the provisions of this chapter.

(c) It is the intent of the Legislature that consumer protection is the primary mission of the board.

(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. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 49. Section 8528 of the Business and Professions Code is amended to read:

8528. With the approval of the director, the board shall appoint a registrar, fix his or her compensation and prescribe his or her duties.

The registrar is the executive officer and secretary of 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. 51. The Director of Pesticide Regulation and the Structural Pest Control Board shall review and revise, if necessary, the terms of the interagency agreement developed pursuant to Section 8616 of the Business and Professions Code and shall report to the Legislature on the terms of that agreement no later than February 1, 1998.

SEC. 52. The Department of Consumer Affairs shall submit to the Legislature, on or before October 1, 1998, a report that identifies which board licensing examinations have been validated and which ones have had performed on them an occupational analysis and, after conducting a survey of all boards, specifies the extent to which the boards are using cost recovery and cite and fine programs.

SEC. 52.5. Section 1.5 of this bill incorporates amendments to Section 101 of the Business and Professions Code proposed by both this bill and SB 1346. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1998, (2) each bill amends Section 101 of the Business and Professions Code, and (3) this bill is enacted after SB 1346, in which case Section 1 of this bill shall not become operative.

SEC. 53. Section 28.5 of this bill incorporates amendments to Section 4001 of the Business and Professions Code proposed by both this bill and SB 1349. 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 1349, in which case Section 28.3 of this bill shall not become operative.

SEC. 54. Section 28.9 of this bill incorporates amendments to Section 4003 of the Business and Professions Code proposed by both this bill and SB 1349. 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 1349, in which case Section 28.7 of this bill shall not become operative.

SEC. 55. Section 30 of this bill incorporates amendments to Section 4008 of the Business and Professions Code proposed by both this bill and SB 1349. 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 1349, in which case Section 29 of this bill shall not become operative.

CHAPTER 760

An act to amend Section 51226.6 of the Education Code, and to amend Sections 12507.1, 12509, 12514, 12660, and 12814.6 of, and to repeal Sections 12507 and 12512 of, the Vehicle Code, relating to vehicles.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. Section 51226.6 of the Education Code is amended to read:

51226.6. (a) The State Department of Education shall develop and adopt a model curriculum framework for driver education and training that incorporates the rules and regulations adopted by the State Board of Education relating to driver education pursuant to Sections 41905 and 51850, and that is directed to preparing student drivers for compliance with paragraph (4) of subdivision (a) of Section 12814.6 of the Vehicle Code.

(b) The State Department of Education shall not be required to comply with the requirements of subdivision (a) unless federal funding is available to defray the cost of developing and adopting the model curriculum framework for driver training and education.

SEC. 2. Section 12507 of the Vehicle Code is repealed.

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

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

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

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

(1) The applicant has complied with the requirements of paragraph (4) of subdivision (a) of Section 12814.6.

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

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

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

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

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

(ii) Be at least 25 years of age.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Paragraph (9) of subdivision (a) of Section 12814.6.

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

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

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

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

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

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

SEC. 4. Section 12509 of the Vehicle Code is amended to read:

12509. (a) Except as otherwise provided in subdivision (f) of Section 12514, the department, for good cause, may issue an instruction permit to any physically and mentally qualified person who meets one of the following requirements and who applies to the department for an instruction permit:

(1) Is age 15 years and 6 months or over and has successfully completed approved courses in automobile driver education and driver training as provided in paragraph (4) of subdivision (a) of Section 12814.6.

(2) Is age 15 years and 6 months or over and has successfully completed an approved course in automobile driver education and is taking driver training as provided in paragraph (4) of subdivision (a) of Section 12814.6.

(3) Is age 15 years or over and is enrolled in an approved driver education course and is at the same time or during the same semester enrolled in an approved driver training course.

(4) Is over the age of 17 years and 6 months.

(b) An instruction permit issued pursuant to subdivision (a) shall entitle the applicant to operate a vehicle, subject to the limitations imposed by this section and any other provisions of law, upon the highways for a period not exceeding 12 months.

(c) Except as provided in paragraph (1) of subdivision (a) of Section 12814.6, any person, while having in his or her immediate possession a valid permit issued pursuant to subdivision (a), may operate a motor vehicle, other than a motorcycle or a motorized bicycle, when either taking the driver training instruction of a kind referred to in paragraph (4) of subdivision (a) of Section 12814.6, or when practicing that instruction, and when accompanied by, and under the immediate supervision of, a California licensed driver 18 years of age or over whose driving privilege is not on probation. Except as provided in subdivision (d), an accompanying licensed driver at all times shall occupy a position within the driver's compartment that would enable the accompanying licensed driver

to assist the person in controlling the vehicle as may be necessary to avoid a collision and to provide immediate guidance in the safe operation of the vehicle.

(d) Any person while having in his or her immediate possession a valid permit issued pursuant to subdivision (a), who is age 15 years and 6 months or over and who has successfully completed approved courses in automobile education and driver training as provided in paragraph (4) of subdivision (a) of Section 12814.6, and any person while having in his or her immediate possession a valid permit issued pursuant to subdivision (a) who is age 17 years and 6 months or over, may, in addition to operating a motor vehicle pursuant to subdivision (c), also operate a motorcycle or a motorized bicycle, except that the person shall not operate a motorcycle or a motorized bicycle during hours of darkness, shall stay off any freeways that have full control of access and no crossings at grade and shall not carry any passenger except an instructor licensed under Chapter 1 (commencing with Section 11100) of Division 5 of this code or a qualified instructor as defined in Section 18252.2 of the Education Code.

(e) No student shall take driver training instruction unless he or she is at the same time taking driver education instruction or has successfully completed driver education.

(f) The department may also issue an instruction permit to a person who has been issued a valid driver's license to authorize the person to obtain driver training instruction and to practice that instruction in order to obtain another class of driver's license or an endorsement.

(g) The department may further restrict permits issued under subdivision (a) as it may determine to be appropriate to assure the safe operation of a motor vehicle by the permittee.

SEC. 5. Section 12512 of the Vehicle Code is repealed.

SEC. 6. Section 12514 of the Vehicle Code is amended to read:

12514. (a) Junior permits issued pursuant to Section 12513 shall not be valid for a period exceeding that established on the original request as the approximate date the minor's operation of a vehicle will no longer be necessary. In any event, no permit shall be valid on or after the 18th birthday of the applicant.

(b) The department may revoke any permit when to do so is necessary for the welfare of the minor or in the interests of safety.

(c) If conditions or location of residence, which required the minor's operation of a vehicle, change prior to expiration of the permit, the department may cancel the permit.

(d) Upon a determination that the permittee has operated a vehicle in violation of restrictions, the department shall revoke the permit.

(e) A junior permit is a form of driver's license that shall include all information required by subdivision (a) of Section 12811 except for an engraved picture or photograph of the permitee, and is subject

to all provisions of this code applying to driver's licenses, except as otherwise provided in this section and Section 12513.

(f) An instruction permit valid for a period of not more than six months may be issued after eligibility has been established under Section 12513.

(g) The department shall cancel any permit six months from the date of issuance unless the permittee has complied with one of the conditions prescribed by paragraph (4) of subdivision (a) of Section 12814.6.

SEC. 7. Section 12660 of the Vehicle Code is amended to read:

12660. (a) The department may establish a program authorizing a driving school licensed pursuant to Chapter 1 (commencing with Section 11100) of Division 5 to issue a student license to operate a class 3 vehicle to any applicant 15 years of age or older, subject to the conditions specified in subdivision (d).

(b) The department may charge any driving school participating in the program a fee not to exceed two dollars ($2) per applicant to recover the department's cost in establishing and monitoring the program. The fee that a participating school may charge an applicant for a student license may not exceed the fee which the department charges the school for the license.

(c) The department may remove a driving school from the program if the department determines that the school has issued a student license fraudulently, or has otherwise not followed the requirements of the program. This fraudulent conduct may result in cause for suspension or revocation of the driving school license.

(d) (1) Applicants shall meet the qualification standards specified in regulations adopted by the department pursuant to Section 12661. The student license application shall be accompanied by a statement signed by the parents or guardian, or person having custody of the minor, consenting to the issuance of a student license to the applicant.

(2) No licensed driving school shall issue a student license to any applicant under the age of 17 years and six months unless that applicant shows either proof of enrollment in, or satisfactory completion of, an approved course in driver education, pursuant to standards specified in paragraph (4) of subdivision (a) of Section 12814.6.

(e) A driving school owner or an independent instructor licensed under Section 11105.5 shall maintain liability insurance for bodily injury or property damage caused by the use of a motor vehicle in driving instruction, and for the liability of the driving school, the instructor, and the student, in accordance with Section 11103.

(f) The department shall submit a report to the Legislature on the progress of the program established pursuant to subdivision (a) within two years after the program is implemented. The report shall include, but not be limited to, an analysis of the costs and benefits of the program and shall include recommendations by the department.

(g) The director may terminate the program at any time the department determines that continued operation of the program would have an adverse effect on traffic safety. The finding upon which the termination is based shall be reported to the Legislature within 30 days following termination of the program.

SEC. 8. Section 12814.6 of the Vehicle Code is amended to read:

12814.6. (a) Notwithstanding any other provision of law, any driver's license issued to a person under 18 years of age shall be issued pursuant to the provisional licensing program contained in this section. The program shall consist of all of the following components:

(1) Upon application for an original license, the applicant shall be issued an instruction permit pursuant to Section 12509. A person who has in his or her immediate possession a valid permit issued pursuant to Section 12509 may operate a motor vehicle, other than a motorcycle or motorized bicycle, subject to Section 12509 only if that person is accompanied by, and under the immediate supervision of, a driver who is 25 years of age or older, who holds a driver's license issued under this code, and whose driving privilege is not on probation. The age requirement of this paragraph does not apply if the licensed driver is the parent, spouse, or guardian of the permitholder or is a licensed or certified driving instructor.

(2) Before retaking a test, the person shall wait for not less than one week after failure of the written test and for not less than two weeks after failure of the driving test.

(3) The person shall hold an instruction permit for not less than six months prior to applying for a provisional driver's license.

(4) The person shall successfully complete an examination required by the department and shall have complied with one of the following:

(A) Satisfactory completion of approved courses in automobile driver education and driver training maintained pursuant to provisions of the Education Code in any secondary school of California, or equivalent instruction in a secondary school of another state.

(B) Satisfactory completion of six hours or more of behind-the-wheel instruction by a driving school or an independent driving instructor licensed under Chapter 1 (commencing with Section 11100) of Division 5 and either an accredited course in automobile driver education in any secondary school of California pursuant to provisions of the Education Code or satisfactory completion of equivalent professional instruction acceptable to the department. To be acceptable to the department, the professional instruction shall meet minimum standards to be prescribed by the department, which standards shall be at least equal to the requirements for driver education and training contained in the rules and regulations adopted by the State Board of Education pursuant to provisions of the Education Code. A person who has complied with this subdivision shall not be required by the governing board of a

school district to comply with subparagraph (A) in order to graduate from high school.

(5) The person shall complete 50 hours of supervised driving practice prior to the issuance of a provisional license, which is in addition to any other driver training instruction required by law. Not less than 10 of the required practice hours shall include driving during darkness, as defined in Section 280. Upon application for a provisional license, the person shall submit to the department the certification of a parent, spouse, guardian, or licensed or certified driving instructor that the applicant has completed the required amount of driving practice and is prepared to take the department's driving test. A person without a parent, spouse, guardian, or who is an emancipated minor, may have a licensed driver 25 years of age or older or a licensed or certified driving instructor complete the certification. This requirement does not apply to motorcycle practice.

(6) The driving privilege shall be suspended when the record of the person shows one or more notifications issued pursuant to Section 40509 or Section 40509.5. The suspension shall continue until any notification issued pursuant to Section 40509 or 40509.5 has been cleared.

(7) A 30-day restriction shall be imposed when a driver's record shows a violation point count of two or more points in 12 months, as determined in accordance with Section 12810. The restriction shall require the licensee to be accompanied by a licensed parent, spouse, guardian, or other licensed driver 25 years of age or older, except when operating a class M vehicle, if so licensed, with no passengers aboard.

(8) The provisional driver's license shall be subject to all of the following restrictions:

(A) Except as specified in subparagraph (C), during the first six months after issuance of a provisional license the licensee shall not do any of the following unless accompanied and supervised by a licensed driver who is the licensee's parent or guardian, a licensed driver who is 25 years of age or older, or a licensed or certified driving instructor:

(i) Drive between the hours of 12:00 a.m. and 5:00 a.m.

(ii) Transport passengers who are under 20 years of age.

(B) During the second six months after issuance of a provisional license the licensee may transport passengers under the age of 20 years between the hours of 5:00 a.m. and 12:00 a.m. without supervision. This driving time restriction shall not modify or alter any local ordinance that restricts or prohibits cruising during specified proscribed hours. However, the restriction imposed under clause (i) of subparagraph (A) shall continue to apply during this period.

(C) A licensee may drive between the hours of 12:00 a.m. and 5:00 a.m. or transport an immediate family member without being accompanied and supervised by a licensed driver who is the

licensee's parent or guardian, a licensed driver who is 25 years of age or older, or a licensed or certified driving instructor, in the following circumstances:

(i) Medical necessity of the licensee when reasonable transportation facilities are inadequate and operation of a vehicle by a minor is necessary. The licensee shall keep in his or her possession a signed statement from a physician familiar with the condition, containing a diagnosis and probable date when sufficient recovery will have been made to terminate the necessity.

(ii) Schooling or school-authorized activities of the licensee when reasonable transportation facilities are inadequate and operation of a vehicle by a minor is necessary. The licensee shall keep in his or her possession a signed statement from the school principal, dean, or school staff member designated by the principal or dean, containing a probable date that the schooling or school-authorized activity will have been completed.

(iii) Employment necessity of the licensee when reasonable transportation facilities are inadequate and operation of a vehicle by a minor is necessary. The licensee shall keep in his or her possession a signed statement from the employer, verifying employment and containing a probable date that the employment will have been completed.

(iv) Necessity of the licensee or the licensee's immediate family member when reasonable transportation facilities are inadequate and operation of a vehicle by a minor is necessary to transport the licensee or the licensee's immediate family member. The licensee shall keep in his or her possession a signed statement from a parent or legal guardian verifying the reason and containing a probable date that the necessity will have ceased.

(v) The licensee is an emancipated minor.

(9) A six-month suspension of the driving privilege and a one-year term of probation shall be imposed whenever a licensee's record shows a violation point count of three or more points in 12 months, as determined in accordance with Section 12810. The terms and conditions of probation shall include, but not be limited to, both of the following:

(A) The person shall violate no law which, if resulting in conviction, is reportable to the department under Section 1803.

(B) The person shall remain free from accident responsibility.

(b) Any term of restriction or suspension of the driving privilege imposed on a person under this section shall remain in effect until the end of the term even though the person becomes 18 years of age before the term ends.

(c) Whenever action by the department under subdivision (a) arises as a result of a motor vehicle accident, the person may, in writing and within 10 days, demand a hearing to present evidence that he or she was not responsible for the accident upon which the action is based. Whenever action by the department is based upon

a conviction reportable to the department under Section 1803, the person has no right to a hearing pursuant to Article 3 (commencing with Section 14100) of Chapter 3.

(d) The department shall require any person whose driving privilege is suspended or revoked pursuant to this section to submit proof of financial responsibility as defined in Section 16430. The proof of financial responsibility shall be filed on or before the date of reinstatement following the suspension or revocation. The proof of financial responsibility shall be maintained with the department for three years following the date of reinstatement.

(e) Notwithstanding any other provision of this code, the department may issue a distinctive driver's license, which displays a distinctive color or a distinctively colored stripe or other distinguishing characteristic, to persons 16 years of age and older but under 18 years of age, and to persons 18 years of age and older but under 21 years of age, so that the distinctive license feature is immediately recognizable. The features shall clearly differentiate between drivers' licenses issued to persons 16 years of age or older but under 18 years of age and to persons 18 years of age or older but under 21 years of age.

If changes in the format or appearance of drivers' licenses are adopted pursuant to this subdivision, those changes may be implemented under any new contract for the production of driver's licenses entered into after the adoption of those changes.

(f) A law enforcement officer shall not stop a vehicle for the sole purpose of determining whether the driver is in violation of the restrictions imposed under subparagraph (A) or (B) of paragraph (8) of subdivision (a).

(g) (1) Upon a finding that any licensee has violated clause (i) or (ii) of subparagraph (A) of paragraph (8) of subdivision (a), the court shall impose one of the following:

(A) Not less than eight hours nor more than 16 hours of community service for a first offense and not less than 16 hours nor more than 24 hours of community service for a second or subsequent offense.

(B) A fine of not more than thirty-five dollars ($35) for a first offense and a fine of not more than fifty dollars ($50) for a second or subsequent offense.

(2) If the court orders community service, the court shall retain jurisdiction until the hours of community service have been completed.

(3) If the hours of community service have not been completed within 90 days, the court shall impose a fine of not more than thirty-five dollars ($35) for a first offense and not more than fifty dollars ($50) for a second or subsequent offense.

(h) The department shall include, on the face of the provisional driver's license, the original issuance date of the provisional driver's license in addition to any other issuance date.

(i) This section shall be known and may be cited as the Brady-Jared Teen Driver Safety Act of 1997.

(j) This section shall become operative on July 1, 1998.

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 761

An act to add Section 8169.5 to the Government Code, relating to state property.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. Section 8169.5 is added to the Government Code, to read:

8169.5. (a) In furtherance of the Capitol Area Plan, the objectives of Resolution Chapter 131 of the Statutes of 1991, and the legislative findings and declarations contained in Chapter 193 of the Statutes of 1996, relative to the findings by the Urban Land Institute, the director may purchase, exchange, or otherwise acquire real property and construct facilities, including any improvements, betterments, and related facilities, within the jurisdiction of the Capitol Area Plan in the City of Sacramento pursuant to this section. The total authorized scope of the project shall consist of up to approximately 1,470,200 gross square feet of office space and approximately 742,625 gross square feet of parking structures for use by the State Department of Education, the State Department of Health Services, and the Department of General Services as anchor tenants on blocks 171, 172, 173, 174, and 225, along with related additional parking on block 224, within the Capitol area. The acquisition and construction authorized pursuant to this section may not cause the displacement of any state or legislative employee parking spaces in the blocks specified in this subdivision unless the Department of General Services makes available existing

state-owned parking spaces, acquires parking spaces, or constructs replacement parking that results in the affected employees' parking spaces being located at a reasonable distance from their place of employment.

(b) Subject to paragraphs (2) and (3) of subdivision (c), the department may contract for the lease, lease-purchase, lease with an option to purchase, acquisition, design, design-build, construction, construction management, and other services related to the design and construction of the office and parking facilities authorized to be acquired pursuant to subdivision (a).

(c) (1) The State Public Works Board may issue revenue bonds, negotiable notes, or negotiable bond anticipation notes pursuant to Chapter 5 (commencing with Section 15830) of Part 10b of Division 3 to finance all costs associated with acquisition, design, and construction of office and parking facilities for the purposes of this section. The State Public Works Board and the department may borrow funds for project costs from the Pooled Money Investment Account pursuant to Sections 16312 and 16313. In the event the bonds authorized by the project are not sold, the State Department of Education, the State Department of Health Services, and the Department of General Services, as determined by the Department of Finance, shall commit a sufficient amount of their support appropriations to repay any loans made for the project from the Pooled Money Investment Account. It is the intent of the Legislature that this commitment shall be included in future Budget Acts until all outstanding loans from the Pooled Money Investment Account are repaid either through the proceeds from the sale of bonds or from an appropriation.

(2) (A) If the department proposes to acquire the facilities on a design-build basis, prior to the department entering into an agreement pursuant to subdivision (b) to design and build the facilities on blocks 171, 172, 173, 174, and 225, as specified in subdivision (a), the department shall submit to the Legislature a copy of all documents that shall be the basis upon which bids will be solicited and awarded to design and build the facilities. The documents shall include the following:

(i) The request for qualifications.

(ii) Site development guidelines.

(iii) Architectural and all system design requirements for the facilities.

(iv) Notwithstanding any other provision of law, the recommended specific criteria and process by which the contractor shall be selected.

(v) The performance criteria and standards for the architecture and all components and systems of the facilities.

(B) The information in the documents shall be provided in at least as much detail as was prepared for the San Francisco Civic Center Complex project and shall cover the quality of materials, equipment,

and workmanship to be used in the facilities. These documents shall also include a detailed and specific space program for the facilities that identifies the specific spatial needs of the state agencies.

(C) If the department proposes to contract for construction separate from design, the department shall, prior to commencing work on working drawings for the facilities on blocks 171, 172, 173, 174, and 225, submit to the Legislature a copy of the preliminary plans for the facilities and a detailed and specific space program for the facilities that identifies the specific spatial needs of the state agencies.

(D) Regardless of how the department proposes to acquire the facilities, the department also shall submit all of the following information, which may be included in the bid documents:

(i) A final estimated cost for design, construction, and other costs.

(ii) How the department would manage the contracts entered into for this project to ensure compliance with contract requirements and to ensure that the state receives the highest level of quality workmanship and materials for the funds spent on the project.

(3) The department shall submit to the Legislature the information required to be submitted pursuant to paragraphs (2) and (6) on or before December 1, 1998. Except for those contracts and agreements necessary to prepare the information required by paragraphs (2) and (6), the department shall not solicit bids to enter into any agreement to design and build or otherwise acquire the facilities or commence work on working drawings on blocks 171, 172, 173, 174, or 225 sooner than the later of April 1, 1999, or 120 days after the department submits to the Legislature the information required to be submitted pursuant to paragraphs (2) and (6). The Legislative Analyst shall evaluate the information submitted to the Legislature and shall prepare a report to the Joint Committee on Rules within 60 days of receiving the documents submitted to the Legislature. It is the intent of the Legislature that the Joint Committee on Rules meet prior to the date the department is authorized to solicit bids to design and build or otherwise acquire the facilities or commence work on working drawings for the purposes of discussing the report from the Legislative Analyst and adopting a report with any recommendations to the department on changes to the site design criteria, performance criteria, and specifications and specific criteria for determining the winning bidder. If the Joint Committee on Rules adopts a report prior to the date the department is authorized to solicit bids to design and build or otherwise acquire the facilities or commence work on working drawings, the department may solicit the bids or commence the work when the report is adopted by the Joint Committee on Rules. The Senate Committee on Rules and the Speaker of the Assembly may designate members of their respective houses to monitor the progress of the preparation of the documents to be submitted pursuant to paragraph (2). The department shall prepare periodic progress reports and meet with the designated members or their representatives, as necessary, while preparing the documents.

(4) The amount of revenue bonds, negotiable notes, or negotiable bond anticipation notes to be sold may equal, but shall not exceed, the cost of planning, preliminary plans, working drawings, construction, construction management and supervision, other costs relating to the design and construction of the facilities, and any additional sums necessary to pay interim and permanent financing costs. The additional amount may include interest and a reasonable required reserve fund.

(5) Authorized costs of the facilities for preliminary plans, working drawings, construction, and other costs shall not exceed three hundred ninety-two million dollars ($392,000,000). Notwithstanding Section 13332.11, the State Public Works Board may authorize the augmentation of the amount authorized under this paragraph by up to 10 percent of the amount authorized.

(6) The net present value of the cost to acquire and operate the facilities authorized by subdivision (a) may not exceed the net present value of the cost to lease and operate an equivalent amount of comparable office space over the same time period. The department shall perform this analysis and shall obtain interest rates, discount rates, and Consumer Price Index figures from the Treasurer and submit its analysis with the documents submitted pursuant to paragraph (2) of subdivision (c). For purposes of this analysis, the department shall compare the cost of acquiring and operating the proposed facilities with the avoided cost of leasing and operating an equivalent amount of comparable office space that will no longer need to be leased because either (A) agencies will no longer occupy currently leased facilities when they occupy the proposed facilities, or (B) agencies will no longer occupy currently leased facilities when they occupy state-owned space being vacated by state agencies occupying the proposed facilities. The analysis shall also include the cost of any unique improvement associated with the moving of an agency into any state-owned space that would be vacated by agencies moving into the proposed facilities. However, these costs shall not include the cost of renovating or modernizing vacated state-owned space that is necessary to accommodate state agencies in general purpose office space. This paragraph shall not be construed as authorizing any renovation of state-owned space.

(d) The director may execute and deliver a contract with the State Public Works Board for the lease of the facilities described in this section that are financed with the proceeds of the board's bonds, notes, or bond anticipation notes issued in accordance with this section.

SEC. 2. (a) Prior to the construction on any other blocks, as authorized by this act, a parking garage shall be constructed on block 224 within the Capitol area in the City of Sacramento. Block 224 is a state-owned parcel of land bounded by 13th, 14th, O, and P Streets in Sacramento. Notwithstanding any other provision of law, upon completion of the parking garage on block 224, a total of 85 percent

of the existing parking capacity at the state parking garage situated on block 216 within the Capitol area, which is bounded by 11th, 12th, O, and P Streets in Sacramento, shall be made available to meet the parking needs of legislative employees. This percentage allocation of spaces in the block 216 garage to the Legislature, shall accommodate all legislative parking spaces projected to be displaced by the state office facilities authorized by this act. It is the intent of the Legislature that all parking spaces to be created through the construction of a parking garage on block 224, and other parking structures associated with the office building constructed pursuant to this act, shall be designated for the purposes of accommodating all state employees displaced from block 216 by this act, as well as meeting the additional demands for parking created by the construction of the authorized state office facilities.

(b) Upon the completion of the parking garage described in this section, the Department of General Services shall complete an exchange with the Department of Transportation. As a result of this exchange, the Department of Transportation shall have control, use, and enjoyment of the property that includes the parking garage on Block 224, and the Department of General Services shall have control, use, and enjoyment of the property that includes the parking garage on Block 216. The Department of General Services and the Department of Transportation also shall transfer to Block 224 the existing lease and any other agreements that exist between the two departments regarding the parking garage located on Block 216.

CHAPTER 762

An act to add Chapter 3.6 (commencing with Section 12125) to Part 2 of Division 2 of the Public Contract Code, relating to the Alternative Protest Pilot Project.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. Chapter 3.6 (commencing with Section 12125) is added to Part 2 of Division 2 of the Public Contract Code, to read:

CHAPTER 3.6. THE ALTERNATIVE PROTEST PILOT PROJECT

12125. There is hereby established the Alternative Protest Pilot Project to be administered by the Department of General Services.

12126. (a) Notwithstanding any other provision of law, any department or agency may use the solicitation and alternative protest procedures outlined in this chapter for solicitations

authorized under Chapter 2 (commencing with Section 10290) or Chapter 3 (commencing with Section 12100). The Department of General Services shall develop procedures and guidelines for the implementation of this pilot project. Establishment of procedures for major information technology acquisitions pursuant to this chapter shall be coordinated with the Department of Information Technology.

(b) To be eligible for this pilot project, the contracting department shall agree to participate in the pilot project and the Department of General Services shall indicate that the proposed solicitation shall be conducted as part of the pilot project prior to release of the solicitation. Submission of a bid constitutes consent for participation in the alternative protest pilot project. Any protests filed in relation to the proposed contract award shall be conducted under the procedures set forth by the Department of General Services for the alternative protest pilot project.

(c) Notwithstanding any other provision of law to the contrary, any bid protest conducted under this chapter shall include one or more of the following alternative procedures:

(1) The protest process shall not prevent the commencement of work in accordance with the terms of any other contract awarded pursuant to this chapter. A contract may be entered into pending a final decision on the protest.

(2) The Department of General Services shall review the protest within seven days of the filing date to determine if the protest is frivolous. If determined to be frivolous, the protest shall not proceed under this chapter until the bidder posts a protest bond in an amount not less than 10 percent of the estimated contract value, as determined by the Department of General Services in the solicitation.

(3) The Director of General Services shall issue a ruling within a period not to exceed 45 days from the date the protest is filed.

(4) Arbitration, as defined and established by the Department of General Services, shall be the resolution tool.

(d) Authority to protest under this chapter shall be limited to participating bidders.

(1) Grounds for major information technology acquisition protests shall be limited to violations of the solicitation procedures and that the protestant should have been selected.

(2) Any other acquisition protest filed pursuant to this chapter shall be based on the ground that the bid or proposal should have been selected in accordance with selection criteria in the solicitation document.

(e) Any bidder that has filed a protest after January 1, 1998, on any state government contract that is determined by the Department of General Services to be frivolous shall not be eligible to participate in solicitations conducted under the alternative protest pilot project. After July 1, 1999, any bidder that filed a protest during the previous

fiscal year on a procurement exceeding one million dollars ($1,000,000), which was not upheld by the Department of General Services, shall be ineligible to participate in this pilot project.

12127. Major information technology acquisitions subject to this chapter shall meet the following criteria:

(a) The agency or department has stated its business needs and not detailed specification in the solicitation.

(b) The agency or department has stated the criteria and the weight to be given to each criterion by which it will evaluate all proposals.

(c) The contract shall be awarded based on "value effective acquisition," as that term is defined in Section 12100.7, competitive negotiation, an alternative procurement, or performance-based solicitations.

12127.5 All other procurements subject to this chapter shall meet one or more of the following criteria:

(a) The agency or department has stated its business needs and not detailed specification in the solicitation.

(b) The agency or department has stated the criteria and the weight to be given to each criterion by which it will evaluate all proposals.

(c) The contract shall be awarded based on "value effective acquisition," as that term is defined in Section 12100.7, competitive negotiation, an alternative procurement, performance-based solicitations, or other methodologies as established by the Department of General Services.

12128. (a) The pilot project shall continue until it has been applied to at least 25 contracts, with varying dollar amounts, or until December 31, 1999, whichever occurs later. The Department of General Services shall apply this chapter to the following categories:

(1) Information technology and ancillary services.

(2) Material, supplies, equipment, and ancillary services.

(b) The Department of General Services shall apply this protest pilot project to at least 10 contracts pertaining to information technology.

12129. Notwithstanding Section 7550.5, the Department of General Services shall electronically submit a report to the Legislature regarding the pilot project by July 31, 2000. The report shall include the following:

(a) The percentage of bids with values under five hundred thousand dollars ($500,000), under one million dollars ($1,000,000), and over one million dollars ($1,000,000) or more not in the pilot project that were protested with corresponding data for solicitations issued pursuant to the pilot project.

(b) The number of protests determined to be frivolous by the Department of General Services, subject to this chapter, with corresponding data for solicitations issued pursuant to existing procedures.

(c) The percentage of contracts awarded under the pilot project that were subsequently challenged in a court of law with corresponding data for solicitations issued pursuant to existing procedures.

(d) All costs of a protest incurred by state agencies subject to subdivision (b) of Section 12126 from the original date filed, until final resolution. This shall include all costs associated with a successful protest and commencement of work under subdivision (b) of Section 12126 from the original date filed, until final resolution, with corresponding data for solicitations issued pursuant to existing procedures.

(e) The length of time to resolve protests pursuant to this chapter and the corresponding data for solicitations issued pursuant to existing procedures.

12130. The pilot project shall be considered a success if there is at least a 10-percent reduction in the number of frivolous protests filed with the Department of General Services and if the length of time for the state to resolve protests is reduced by at least 20 percent, or if there is a substantial reduction in the number of protests filed under the pilot project than under the existing protest procedures.

CHAPTER 763

An act to add Section 1295.5 of the Labor Code, relating to employment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. Section 1295.5 is added to the Labor Code, to read:

1295.5. Notwithstanding Section 1391 of this code or Section 49116 of the Education Code, minors 14 years of age and older may be employed during the hours permitted by subdivision (b) to perform sports-attending services in professional baseball as enumerated in subsection (b) of Section 570.35 of Title 29 of the Code of Federal Regulations. No employer may employ a minor 14 or 15 years of age to perform sports-attending services in professional baseball without the prior written approval of either the school district of the school in which the minor is enrolled or the county board of education of the county in which that school district is located.

(b) Any minor 14 or 15 years of age who performs sports-attending services in professional baseball pursuant to subdivision (a) may be employed outside of school hours until 12:30 a.m. during any evening preceding a nonschoolday and until 10 p.m. during any evening

preceding a schoolday. No employer may employ a minor 14 or 15 years of age to perform sports-attending services in professional baseball pursuant to subdivision (a) for more than five hours in any schoolday, for more than 18 hours in any week while school is in session, for more than eight hours in any nonschoolday, or for more than 40 hours in any week that school is not in session. An employer may employ a minor 16 or 17 years of age outside of school hours to perform sports-attending services in professional baseball pursuant to subdivision (a) for up to five hours in any schoolday.

(c) The school authority issuing the permit to the minor to perform sports-attending services in professional baseball shall (1) provide the local office of the Division of Labor Standards Enforcement with a copy of the permit within five business days after the date the permit is issued and (2) monitor the academic achievement of the minor to ensure that the educational progress of the minor is being maintained or improves during the period of employment.

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 conform state law to federal regulations at the earliest possible time, so as to allow the lawful employment of certain minors to perform sports-attending services in professional baseball as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 764

An act to amend Section 115915 of the Health and Safety Code, relating to public beaches.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Eighty-five times in 1994 beaches along the California coastline were closed due to contamination. This represents 1,605 days beaches were closed to the public.

(b) California beaches were posted with warnings of contaminated water 1,447 days in 1995.

(c) California is committed to ensuring that steps are taken to reduce the number of days beaches are closed due to contamination.

(d) Until such time we can guarantee the cleanliness of our coastal waters, it is imperative that the public be fully and adequately informed of the possible risks of entering contaminated waters.

(e) There exist many points of access where adequate warnings in the past have not been posted to provide adequate warning to the public.

(f) To increase public awareness of the safety levels at California beaches and to ensure the fullest protection of the public from the dangers associated with contaminated coastal waters, it is essential that managers of beaches post signs that are visible from all access points.

SEC. 2. Section 115915 of the Health and Safety Code is amended to read:

115915. (a) Whenever any beach fails to meet the bacteriological standards of Section 7958 of Title 17 of the California Code of Regulations, the health officer, after determining that the elevated bacteriological levels constitutes a public health hazard, shall, at a minimum, post the beach with conspicuous warning signs to inform the public of the nature of the problem and the possibility of risk to public health.

(b) A warning sign shall be visible from each legal primary beach access point as identified in the coastal access inventory prepared and updated pursuant to Section 30531 of the Public Resources Code, and any additional access points identified by the health officer.

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 765

An act to amend Sections 115880, 115885, and 115915 of the Health and Safety Code, relating to public beaches.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. Section 115880 of the Health and Safety Code is amended to read:

115880. (a) The department shall by regulation, in consultation with local health officers and the public, establish minimum standards for the sanitation of public beaches, including, but not limited to, the removal of refuse, as it determines are reasonably necessary for the protection of the public health and safety.

(b) Prior to final adoption by the department, the regulations and standards required by this section shall undergo an external comprehensive review process similar to the process set forth in Section 57004 of the Health and Safety Code.

(c) The regulations shall, at a minimum, do all of the following, by December 31, 1998:

(1) Require the testing of the waters adjacent to all public beaches for microbiological contaminants, including, but not limited to, total coliform, fecal coliform, and enterococci bacteria. The department may require the testing of waters adjacent to all public beaches for microbiological indicators other than those set forth in this paragraph, or a subset of those set forth in this paragraph, if the department affirmatively establishes, based on the best available scientific studies and the weight of the evidence, that the alternative indicators are as protective of the public health.

(2) Establish protective minimum standards for total coliform, fecal coliform, and enterococci bacteria, or for other microbiological indicators that the department determines are appropriate for testing pursuant to paragraph (1).

(3) Establish protocols for all of the following:

(A) Determining monitoring site locations and monitoring frequency based on risks to public health.

(B) Making decisions regarding public notification of health hazards, including, but not limited to the posting, closing, and reopening of public beaches.

(4) Require that the waters adjacent to public beaches be tested for total coliform, fecal coliform, and enterococci bacteria, or for other microbiological indicators that the department determines are appropriate for testing pursuant to paragraph (1). Except as set forth in paragraph (5), testing shall be conducted on at least a weekly basis, from April 1 to October 31, inclusive, of each year, beginning in 1999, if all of the following apply:

(A) The beach is visited by more than 50,000 people annually.

(B) The beach is located on an area adjacent to a storm drain that flows in the summer.

(5) The monitoring frequency and locations established pursuant to this subdivision and related regulations may only be reduced or altered after the testing required pursuant to paragraph (4) reveals levels of microbiological contaminants that do not exceed for a period

of two years the minimum protective standards established pursuant to paragraph (2).

(d) The local health officer shall be responsible for testing the waters adjacent to, and coordinating the testing of, all public beaches within his or her jurisdiction.

(e) The local health officer may meet the testing requirements of this section by utilizing test results from other agencies conducting microbiological contamination testing of the waters under his or her jurisdiction.

(f) Any city or county may adopt standards for the sanitation of public beaches within its jurisdiction that are stricter than the standards adopted by the state department pursuant to this section.

(g) For purposes of this section, "public beach" means any public beach located within the coastal zone, as defined in Section 30103 of the Public Resources Code.

(h) Any duty imposed upon a local public officer or agency pursuant to this section shall be mandatory only during a fiscal year in which the Legislature has appropriated sufficient funds, as determined by the State Director of Health Services, in the annual Budget Act or otherwise for local agencies to cover the costs to those agencies associated with the performance of these duties. The State Director of Health Services shall annually, within 15 days after enactment of the Budget Act, file a written statement with the Secretary of the Senate and with the Chief Clerk of the Assembly memorializing whether sufficient funds have been appropriated.

SEC. 2. Section 115885 of the Health and Safety Code is amended to read:

115885. The health officer having jurisdiction over the area in which a public beach is created shall:

(a) Inspect the public beach to determine whether the standards established pursuant to Section 115880 are being complied with. If the health officer finds any violation of the standards, he or she may restrict the use of, or close, the public beach or portion thereof in which the violation occurs until the standard is complied with.

(b) Investigate any complaint of a person of a violation of any standard established by the department pursuant to Section 115880. If the health officer finds any violation of the standards prescribed by the department, he or she may restrict the use of, or close, the public beach or portion thereof until the standard is complied with. If the person who made the complaint is not satisfied with the action taken by the health officer, he or she may report the violation to the department. The department shall investigate the reported violation, and, if it finds that the violation exists, it may restrict the use of or close the public beach or portion thereof until the standard violated is complied with.

(c) (1) Whenever a beach is posted, closed, or otherwise restricted in accordance with Section 115915, the health officer shall

inform the agency responsible for the operation and maintenance of the public beach within 24 hours of the posting, closure, or restriction.

(2) The health officer shall establish a telephone hotline to inform the public of all beaches currently closed, posted, or otherwise restricted. The hotline shall be updated as needed in order to convey changes in public health risks.

(d) Report any violation of the standards established pursuant to Section 115880 to the district attorney, or if the violation occurred in a city and, pursuant to Section 41803.5 of the Government Code, the city attorney is authorized to prosecute misdemeanors, to the city attorney.

(e) In the event of a known untreated sewage release, the local health officer shall immediately test the waters adjacent to the public beach and to take action pursuant to regulations established under Section 115880.

(f) Notwithstanding any other provision of law, in the event of an untreated sewage release that is known to have reached recreational waters adjacent to a public beach, the local health officer shall immediately close those waters until it has been determined by the local health officer that the waters are in compliance with the standards established pursuant to Section 115880.

(g) Any duty imposed upon a local public officer or agency pursuant to this section shall be mandatory only during a fiscal year in which the Legislature has appropriated sufficient funds, as determined by the State Director of Health Services, in the annual Budget Act or otherwise for local agencies to cover the costs to those agencies associated with the performance of these duties. The State Director of Health Services shall annually, within 15 days after enactment of the Budget Act, file a written statement with the Secretary of the Senate and with the Chief Clerk of the Assembly memorializing whether sufficient funds have been appropriated.

SEC. 3. Section 115915 of the Health and Safety Code is amended to read:

115915. (a) Whenever any beach fails to meet the bacteriological standards established pursuant to subdivision (b) of Section 115880, the health officer shall, at a minimum, post the beach with conspicuous warning signs to inform the public of the nature of the problem and the possibility of risk to public health.

(b) A warning sign shall be visible from each legal primary beach access point, as identified in the coastal access inventory prepared and updated pursuant to Section 30531 of the Public Resources Code, and any additional access points identified by the health officer.

(c) Any duty imposed upon a local public officer or agency pursuant to this section shall be mandatory only during a fiscal year in which the Legislature has appropriated sufficient funds, as determined by the State Director of Health Services, in the annual Budget Act or otherwise for local agencies to cover the costs to those agencies associated with the performance of these duties. The State

Director of Health Services shall annually, within 15 days after enactment of the Budget Act, file a written statement with the Secretary of the Senate and with the Chief Clerk of the Assembly memorializing whether sufficient funds have been appropriated.

SEC. 4. 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 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.

Moreover, as to other costs, no reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

Also, 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 766

An act to amend Section 5650 of the Fish and Game Code, relating to water pollution, and making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. Section 5650 of the Fish and Game Code is amended to read:

5650. (a) Except as provided in subdivision (b), it is unlawful to deposit in, permit to pass into, or place where it can pass into the waters of this state any of the following:

(1) Any petroleum, acid, coal or oil tar, lampblack, aniline, asphalt, bitumen, or residuary product of petroleum, or carbonaceous material or substance.

(2) Any refuse, liquid or solid, from any refinery, gas house, tannery, distillery, chemical works, mill, or factory of any kind.

(3) Any sawdust, shavings, slabs, or edgings.

(4) Any factory refuse, lime, or slag.

(5) Any cocculus indicus.

(6) Any substance or material deleterious to fish, plant life, or bird life.

(b) This section does not apply to a discharge or a release that is expressly authorized pursuant to , and in compliance with, the terms and conditions of a waste discharge requirement pursuant to Section 13263 of the Water Code or a waiver issued pursuant to subdivision (a) of Section 13269 of the Water Code issued by the State Water Resources Control Board or a regional water quality control board after a public hearing, or that is expressly authorized pursuant to, and in compliance with, the terms conditions of a federal permit for which the State Water Resources Control Board or a regional water quality control board has, after a public hearing, issued a water quality certification pursuant to Section 13160 of the Water Code. This section does not confer additional authority on the State Water Resources Control Board, a regional water quality control board, or any other entity.

(c) It shall be an affirmative defense to a violation of this section if the defendant proves, by a preponderance of the evidence, all of the following:

(1) The defendant complied with all applicable state and federal laws and regulations requiring that the discharge or release be reported to a government agency.

(2) The substance or material did not enter the waters of the state or a storm drain that discharges into the waters of the state.

(3) The defendant took reasonable and appropriate measures to effectively mitigate the discharge or release in a timely manner.

(d) The affirmative defense in subdivision (c) does not apply and may not be raised in an action for civil penalties or injunctive relief pursuant to Section 5650.1.

(e) The affirmative defense in subdivision (c) does not apply and may not be raised by any defendant who has on two prior occasions in the preceding five years, in any combination within the same county in which the case is prosecuted, either pleaded nolo contendere, been convicted of a violation of this section, or suffered a judgment for a violation of this section or Section 5650.1. This subdivision shall apply only to cases filed on or after January 1, 1997.

(f) The affirmative defense in subdivision (c) does not apply and may not be raised by the defendant in any case in which a district attorney, city attorney, or Attorney General alleges, and the court finds, that the defendant acted willfully.

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.

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 conditions when the affirmative defense to the prohibition on depositing or permitting certain deleterious materials in waters of the state may and may not be raised in a prosecution or civil action for a violation of the prohibition at the earliest time, it is necessary for this act to take effect immediately.

CHAPTER 767

An act relating to the Compton Unified School District, and making an appropriation therefor.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. (a) It is the intent of the Legislature that the governing board, staff, and community of the Compton Unified School District contribute to and participate in a recovery process for the district in order to improve pupil services, safety, and achievement in all areas.

(b) It is the intent of the Legislature that the governing board of the Compton Unified School District, by July 1, 2000, be returned its designated legal rights, duties, and powers only after the board and the district demonstrate significant improvement in the areas of pupil achievement, financial and facilities management, personnel procedures, and community relations.

SEC. 2. (a) The County Office Fiscal Crisis and Management Assistance Team (FCMAT) and the state-appointed administrator, in consultation with the governing board of the Compton Unified School District, and representatives of employee organizations of the district, shall conduct comprehensive assessments and shall complete, by December 31, 1998, the following recovery plans for the Compton Unified School District:

(1) An instructional recovery plan that includes special education and bilingual education and is consistent with the financial recovery plan required by paragraph (2). The plan shall specify pupil

outcomes that reflect significant improvement in pupil achievement, particularly in the areas of reading, writing, and mathematics. Among the areas addressed by the plan shall be the alignment between pupil achievement objectives at each grade level and assessments, curriculum, and instruction. Included in the plan shall be a clear link between professional development and training for all instructional staff and student achievement objectives.

(2) A financial recovery plan that is consistent with the instructional recovery plan required by paragraph (1) and that includes the current and future projected solvency and fiscal integrity of the school district. The financial recovery plan shall also include, but not be limited to, specific strategies for improving the following:

(A) Management information systems.

(B) Accounting and internal control procedures.

(C) Attendance accounting procedures.

(3) A facilities recovery plan that includes a 5 -year assessment of capital needs and a plan to finance those needs including placing a bond before the voters of the school district. The facilities recovery plan shall also be consistent with the financial recovery plan required by paragraph (2), and shall include, but not be limited to, specific strategies for improving the following:

(A) Protection and safety for pupils, employees, and district property.

(B) Ongoing maintenance of district property.

(C) Management control and procedures for managing all construction and modernization projects.

(4) A personnel recovery plan that is consistent with the financial recovery plan required by paragraph (2), and that includes, but is not limited to, specific strategies for improving the following:

(A) The recruitment, screening, assessment, and hiring procedures for all district staff.

(B) The training of members of the governing board of the school district in the subjects about which members of the governing board must have knowledge in order to discharge their duties as board members effectively.

(C) The training and assessment of the administrators of the school district to ensure that they have the knowledge and skills required to manage effectively the educational programs, finances, safety, and facilities maintenance of the school district.

(D) The calculation and maintenance of appropriate and efficient full-time equivalent staffing ratios for all district staff.

(E) The governance structure of the school district in relation to personnel, operational effectiveness, and responsiveness to the community.

(F) Upon completion of this recovery plan, the training specified therein shall begin immediately.

(5) A community relations improvement plan that is consistent with the financial recovery plan required by paragraph (2), and that includes, but is not limited to, specific strategies for improving the communication among the governing board, personnel of the school district, and parents.

(b) The recovery plans developed pursuant to subdivision (a) shall include the recovery plans previously adopted by the state-appointed administrator pursuant to Section 41327 of the Education Code.

(c) The recovery plans developed pursuant to subdivision (a) shall include specific recommendations and performance milestones in major functional areas of school district operation. Not less than every six months after development of the plans, FCMAT, after consultation with the state-appointed administrator, shall determine whether the school district has made substantial and sustained progress in implementation of the plans in any major functional area.

(d) Upon completion of the training specified in the personnel recovery plan developed pursuant to paragraph (4) of subdivision (a), and certification by FCMAT pursuant to subdivision (c) that there has been substantial and sustained progress in implementing paragraph (4) of subdivision (a), FCMAT shall recommend to the Superintendent of Public Instruction those designated functional areas of school district operation that FCMAT determines are appropriate for the governing board of the school district to assume. Subsequently, FCMAT, after each determination pursuant to subdivision (c), shall determine which, if any, other functional areas of school operation should be restored to the governing board of the school district and shall make that recommendation to the Superintendent of Public Instruction.

(e) For purposes of subdivision (d), the major functional areas of school district operation shall include, but not be limited to, the following:

(1) Instructional program and pupil assessment.

(2) Financial affairs and business practices.

(3) Maintenance and operation of school district sites and facilities.

(4) Personnel.

(5) Community relations.

(f) The governing board of the Compton Unified School District and the state-appointed administrator of the Compton Unified School District may request from FCMAT, pursuant to subdivision (d) of Section 42127.8 of the Education Code, any necessary technical and fiscal assistance to help them implement the recovery plans required by subdivision (a).

(g) The Superintendent of Public Instruction, beginning on January 1, 1998, shall annually file a written report with the appropriate fiscal and policy committees of the Legislature, including any special committees created for the purpose of

reviewing the reports. The report shall include the progress that the Compton Unified School District is making in meeting the conditions of the recovery plans developed pursuant to subdivision (a), the determinations of FCMAT made pursuant to subdivision (c), the recommendations of FCMAT made pursuant to subdivision (d), the action that the superintendent has taken on the FCMAT recommendations, and if the superintendent has not followed the FCMAT recommendations, the reasons for not following them. The duty to report pursuant to this subdivision ceases when the Compton Unified School District governing board regains all of its legal rights, duties, and powers, except for the powers held by the trustee provided for pursuant to Article 2 (commencing with Section 41320).

SEC. 3. (a) The sum of five hundred thousand dollars ($500,000) is hereby appropriated from the General Fund to FCMAT for the purposes of conducting the assessments and completing the recovery plans specified in this act.

(b) Any funds appropriated in this section that are not used by FCMAT for the purposes specified in this section shall revert to the General Fund.

SEC. 4. (a) FCMAT shall provide to the Controller an accounting of expenditures made by it pursuant to the requirements of this act, which may include an audit conducted by the Department of Finance.

(b) It is the intent of the Legislature to appropriate additional funds to FCMAT if the funds appropriated pursuant to Section 3 are deemed by the Legislature as insufficient in order for FCMAT to comply with the requirements of this act.

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

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

CHAPTER 768

An act to amend Sections 1785.14, 1785.16, 1785.30, 1785.31, and 1785.33 of the Civil Code, and to add Section 530.5 to the Penal Code, relating to personal information.

[Approved by Governor October 7, 1997. Filed with
Secretary of State October 8, 1997.]

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

SECTION 1. Section 1785.14 of the Civil Code is amended to read:

1785.14. (a) Every consumer credit reporting agency shall maintain reasonable procedures designed to avoid violations of Section 1785.13 and to limit furnishing of consumer credit reports to the purposes listed under Section 1785.11. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought and certify that the information will be used for no other purposes. From the effective date of this act the consumer credit reporting agency shall keep a record of the purposes as stated by the user. Every consumer credit reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by the prospective user prior to furnishing the user a consumer report. No consumer credit reporting agency may furnish a consumer credit report to any person unless the consumer credit reporting agency has reasonable grounds for believing that the consumer credit report will be used by the person for the purposes listed in Section 1785.11. A consumer credit reporting agency does not have reasonable grounds for believing that a consumer credit report will be used by the person for the purposes listed in Section 1785.11 unless all of the following requirements are met:

(1) If the prospective user is a retail seller, as defined in Section 1802.3, and intends to issue credit to a consumer who appears in person on the basis of an application for credit submitted in person, the consumer credit reporting agency shall, with a reasonable degree of certainty, match at least three categories of identifying information within the file maintained by the consumer credit reporting agency on the consumer with the information provided to the consumer credit reporting agency by the retail seller. The categories of identifying information may include, but are not limited to, first and last name, month and date of birth, driver's license number, place of employment, current residence address, previous residence address, or social security number. The categories of information shall not include mother's maiden name.

(2) If the prospective user is a retail seller, as defined in Section 1802.3, and intends to issue credit to a consumer who appears in person on the basis of an application for credit submitted in person, the retail seller certifies, in writing, to the consumer credit reporting agency that it instructs its employees and agents to inspect a photo identification of the consumer at the time the application was submitted in person. This paragraph does not apply to an application for credit submitted by mail.

(3) If the prospective user intends to extend credit by mail pursuant to a solicitation by mail, the extension of credit shall be mailed to the same address as on the solicitation unless the prospective user verifies any address change by, among other methods, contacting the person to whom the extension of credit will be mailed.

(b) Whenever a consumer credit reporting agency prepares a consumer credit report, it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates. These reasonable procedures shall include, but not be limited to, permanent retention by the consumer credit reporting agency in the consumer's file, or a separately individualized file, of that portion of the data in the file that is used by the consumer credit reporting agency to identify the individual consumer pursuant to paragraph (1) of subdivision (a). This permanently retained data shall be available for use in either a reinvestigation pursuant to subdivision (a) of Section 1785.16, an investigation where the consumer has filed a police report pursuant to subdivision (k) of Section 1785.16, or a restoration of a file involving the consumer. If the permanently retained identifying information is retained in a consumer's file, it shall be clearly identified in the file in order for an individual who reviews the file to easily distinguish between the permanently stored identifying information and any other identifying information that may be a part of the file. This retention requirement shall not apply to data that is reported in error, that is obsolete, or that is found to be inaccurate through the results of a reinvestigation initiated by a consumer pursuant to subdivision (a) of Section 1785.16.

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

(d) A consumer credit reporting agency shall provide a written notice to any person who regularly and in the ordinary course of business supplies information to the consumer credit reporting agency concerning any consumer or to whom a consumer credit report is provided by the consumer credit reporting agency. The notice shall specify the person's obligations under this title. Copies of the appropriate code sections shall satisfy the requirement of this subdivision.

SEC. 2. Section 1785.16 of the Civil Code is amended to read:

1785.16. (a) If the completeness or accuracy of any item of information contained in his or her file is disputed by a consumer, and

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

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

(c) No information may be reinserted in a consumer's file after having been deleted pursuant to this section unless the person who furnished the information verifies that the information is accurate. If any information deleted from a consumer's file is reinserted in the file, the consumer credit reporting agency shall promptly notify the consumer of the reinsertion in writing or, if authorized by the consumer for that purpose, by any other means available to the consumer credit reporting agency. As part of, or in addition to, this notice the consumer credit reporting agency shall, within five business days of reinserting the information, provide the consumer in writing (1) a statement that the disputed information has been reinserted, (2) a notice that the agency will provide to the consumer, within 15 days following a request, the name, address, and telephone

number of any furnisher of information contacted or which contacted the consumer credit reporting agency in connection with the reinsertion, (3) the toll-free telephone number of the consumer credit reporting agency that the consumer can use to obtain this name, address, and telephone number, and (4) a notice that the consumer has the right to a reinvestigation of the information reinserted by the consumer credit reporting agency and to add a statement to his or her file disputing the accuracy or completeness of the information.

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

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

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

(g) Whenever a statement of dispute is filed, the consumer credit reporting agency shall, in any subsequent consumer credit report containing the information in question, clearly note that the information is disputed by the consumer and shall include in the

report either the consumer's statement or a clear and accurate summary thereof.

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

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

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

(k) If a consumer submits to a credit reporting agency a copy of a valid police report filed pursuant to Section 530.5 of the Penal Code, the consumer credit reporting agency shall promptly and permanently block reporting any information that the consumer alleges appears on his or her credit report as a result of a violation of Section 530.5 of the Penal Code so that the information cannot be reported. The consumer credit reporting agency shall promptly notify the furnisher of the information that the information has been so blocked. Furnishers of information and consumer credit reporting agencies shall ensure that information is unblocked only upon a preponderance of the evidence establishing the facts required under paragraph (1), (2), or (3). The permanently blocked information

shall be unblocked only if: (1) the information was blocked due to fraud, or (2) the consumer agrees that the blocked information, or portions of the blocked information, were blocked in error, or (3) the consumer knowingly obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions or the consumer should have known that he or she obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions. If blocked information is unblocked pursuant to this subdivision, the consumer shall be promptly notified in the same manner as consumers are notified of the reinsertion of information pursuant to subdivision (c). The prior presence of the blocked information in the consumer credit reporting agency's file on the consumer is not evidence of whether the consumer knew or should have known that he or she obtained possession of any goods, services, or moneys. For the purposes of this subdivision, fraud may be demonstrated by circumstantial evidence. In unblocking information pursuant to this subdivision, furnishers and consumer credit reporting agencies shall be subject to their respective requirements pursuant to this title regarding the completeness and accuracy of information.

SEC. 3. Section 1785.30 of the Civil Code is amended to read:

1785.30. Upon notification of the results of a consumer credit reporting agency's reinvestigation pursuant to Section 1785.16, an consumer may make a written demand on any person furnishing information to the consumer credit reporting agency to correct any information which the consumer believes to be inaccurate. The person upon whom the written demand is made shall acknowledge the demand within 30 days. The consumer may require the consumer credit reporting agency to indicate on any subsequent reports issued during the dispute that the item or items of information are in dispute. If upon investigation the information is found to be inaccurate or incorrect, the consumer may require the consumer credit reporting agency to delete or correct the item or items of information within a reasonable time. If within 90 days the consumer credit reporting agency does not receive any information from the person requested to furnish the same or any communication relative to this information from this person, the consumer credit reporting agency shall delete the information from the report.

SEC. 4. Section 1785.31 of the Civil Code is amended to read:

1785.31. (a) Any consumer who suffers damages as a result of a violation of this title by any person may bring an action in a court of appropriate jurisdiction against that person to recover the following:

(1) In the case of a negligent violation, actual damages, including court costs, loss of wages, attorney's fees and, when applicable, pain and suffering.

(2) In the case of a willful violation:

(A) Actual damages as set forth in paragraph (1) above:

(B) Punitive damages of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000) for each violation as the court deems proper;

(C) Any other relief which the court deems proper.

(3) In the case of liability of a natural person for obtaining a consumer credit report under false pretenses or knowingly without a permissible purpose, an award of actual damages pursuant to paragraph (1) or subparagraph (A) of paragraph (2) shall be in an amount of not less than two thousand five hundred dollars ($2,500).

(b) Injunctive relief shall be available to any consumer aggrieved by a violation or a threatened violation of this title whether or not the consumer seeks any other remedy under this section.

(c) Notwithstanding any other provision of this section, any person who willfully violates any requirement imposed under this title may be liable for punitive damages in the case of a class action, in an amount that the court may allow. In determining the amount of award in any class action, the court shall consider among relevant factors the amount of any actual damages awarded, the frequency of the violations, the resources of the violator and the number of persons adversely affected.

(d) The prevailing parties in any action commenced under this section shall be entitled to recover court costs and reasonable attorney's fees, unless the plaintiff only seeks and obtains injunctive relief to compel compliance with this title. If the plaintiff only seeks and obtains injunctive relief to compel compliance with this title, court costs and attorney's fees shall be awarded pursuant to Section 1021.5 of the Code of Civil Procedure.

SEC. 5. Section 1785.33 of the Civil Code is amended to read:

1785.33. An action to enforce any liability created under this chapter may be brought in any appropriate court of competent jurisdiction within two years from the date the plaintiff knew of, or should have known of, the violation of this title, but not more than seven years from the earliest date on which liability could have arisen, except that where a defendant has materially and willfully misrepresented any information required under this chapter to be disclosed to a consumer and the information so misrepresented is material to the establishment of the defendant's liability to the consumer under this chapter, the action may be brought at any time within two years after the discovery by the consumer of the misrepresentation.

SEC. 6. Section 530.5 is added to the Penal Code, to read:

530.5. Every person who willfully obtains personal identifying information, as defined in subdivision (b), of another person without the authorization of that person, and uses that information to obtain, or attempt to obtain, credit, goods, or services in the name of the other person without the consent of that person is guilty of a public offense, and upon conviction therefor, shall be punished by

imprisonment in a county jail not to exceed one year, or by a fine not to exceed one thousand dollars ($1,000), or both.

(b) "Personal identifying information," as used in this section, means the name, address, telephone number, driver's license number, social security number, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings account number, or credit card number of an individual person.

SEC. 7. The provisions of this act shall become operative July 1, 1998, except for Section 6, which shall become operative on January 1, 1998.

SEC. 8. The provisions, sections, subdivisions, paragraphs, sentences, words, and clauses of this act are severable. If any provision, section, subdivision, paragraph, sentence, word, or clause, or any application thereof, of this act is held invalid, that invalidity shall not affect the other provisions, sections, subdivisions, paragraphs, sentences, words, or clauses.

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 769

An act to amend Section 1248.4 of the Health and Safety Code, relating to health care, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. Section 1248.4 of the Health and Safety Code is amended to read:

1248.4. (a) It is the intent of the Legislature that an accreditation agency operating on or before January 1, 1995, or a successor thereof, or an accreditation agency thereafter operating as part of a joint program granted temporary certification as an accreditation agency

by the division, whether operating as part of a joint program or independently, and meeting the standards set forth in this chapter, as determined by the division, not be required to go through the entire application process with the division. Therefore, the division may grant a temporary certificate of approval to such an accreditation agency. The temporary approval issued to an accreditation agency under this subdivision shall expire on January 1, 1998. In order to continue its status as an accreditation agency, an accreditation agency approved by the division under this subdivision shall apply for renewal of approval by the division on or before January 1, 1998, and shall establish that it is in compliance with the standards set forth in this chapter and any regulations adopted pursuant thereto.

(b) Each accreditation agency approved by the division shall, on and after January 1, 1995, promptly forward to the division a list of each outpatient setting to which it has granted a certificate of accreditation, as well as settings that have lost accreditation or were denied accreditation.

(c) The division shall approve an accreditation agency that applies for approval on a form prescribed by the division, accompanied by payment of the fee prescribed by this chapter and evidence that the accreditation agency meets the following criteria:

(1) Includes within its accreditation program, at a minimum, the standards for accreditation of outpatient settings approved by the division as well as standards for patient care and safety at the setting.

(2) Submits its current accreditation standards to the division every three years, or upon request for continuing approval by the division.

(3) Maintains internal quality management programs to ensure quality of the accreditation process.

(4) Has a process by which accreditation standards can be reviewed and revised no less than every three years.

(5) Maintains an available pool of allied health care practitioners to serve on accreditation review teams as appropriate.

(6) Has accreditation review teams that shall do all of the following:

(A) Consist of at least one physician and surgeon who practices in an outpatient setting; any other members shall be practicing actively in these settings.

(B) Participate in formal educational training programs provided by the accreditation agency in evaluation of the certification standards at least every three years.

(7) The accreditation agency shall demonstrate that professional members of its review team have experience in conducting review activities of freestanding outpatient settings.

(8) Standards for accreditation shall be developed with the input of the medical community and the ambulatory surgery industry.

(9) Accreditation reviewers shall be credentialed and screened by the accreditation agency.

(10) The accreditation agency shall not have an ownership interest in nor be involved in the operation of a freestanding outpatient setting, nor in the delivery of health care services to patients.

(d) Accreditation agencies approved by the division shall forward to the division copies of all certificates of accreditation and shall notify the division promptly whenever the agency denies or revokes a certificate of accreditation.

(e) A certification of an accreditation agency by the division shall expire at midnight on the last day of a three-year term if not renewed. The division shall establish by regulation the procedure for renewal. To renew an unexpired approval, the accreditation agency shall, on or before the date upon which the certification would otherwise expire, apply for renewal on a form, and pay the renewal fee, as prescribed by the division.

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 allow ongoing accreditation to continue to ensure consumer safety in health facilities, it is necessary that this act go into effect immediately.

CHAPTER 770

An act to add and repeal Article 6 (commencing with Section 112290) of Chapter 5 of Part 6 of Division 104 of the Health and Safety Code, relating to food.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. Article 6 (commencing with Section 112290) is added to Chapter 5 of Part 6 of Division 104 of the Health and Safety Code, to read:

Article 6. Sanitary Control of Shellfish-Pilot Program

112290. The Legislature finds and declares that the public health interest requires that the people of this state be protected from adulterated shellfish grown and harvested in state waters and taken from naturally occurring populations under authority of a sport fishing license issued by the Department of Fish and Game. This

protection is a matter of statewide concern and the purpose of the pilot program created pursuant to this article is to warn the public in order to prevent the taking and consumption of adulterated shellfish and shellstock taken from naturally occurring populations and intended for human consumption, and to provide a factual foundation upon which the Legislature may base policy decisions regarding the desirability of enacting permanent standards.

112291. As used in this article, "unapproved area" means an area that may contain naturally occurring populations of shellfish but that has not been classified pursuant to Section 112292.

112292. (a) As a pilot program, the department shall conduct sanitary surveys for areas containing naturally occurring populations of shellfish harvested by the public, limited to Pismo Beach, Morro Bay, Humboldt Bay, Tomales Bay, San Francisco Bay, Mission Bay, Little River Beach, Carpinteria State Beach, Padrero Lane Beach, Ventura Silver Strand, Holiday Beach, Palos Verdes Peninsula, Huntington Beach, Oceanside State Beach, Aqua Hedionda Lagoon, Batiquitos Lagoon, South San Diego Bay and the mouth of the Ventura River. These surveys shall assess both water quality and shellfish quality, and shall determine those areas that are unfit for recreational shellfish harvesting based upon the standards contained in the National Shellfish Sanitation Program.

(b) The department may adopt regulations necessary to implement the pilot program. The regulations shall provide for methods to conduct sanitary surveys, standards to be used to assess water quality and shellfish quality, and to classify areas, and shall contain requirements for notification of the public. The regulations shall be adopted by the department in the manner prescribed by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

112293. Upon classification of an area by the department pursuant to Section 112292, the department shall inform the public of those determinations and the reasons therefor, no less than twice per year. Should the characteristics of an area change, or should an emergency closure be necessary, the public shall be so notified.

112294. (a) It is the intent of the Legislature to appropriate funds to the department for the purposes of this article from moneys made available through Assembly Bill 1000 of the 1997–98 Regular Session of the Legislature, if that bill is enacted and takes effect on or before January 1, 1998. If AB 1000 is not enacted, it is the intent of the Legislature to provide sufficient funding for this article from other sources.

(b) This article shall be inoperative during any fiscal year where the Legislature has not appropriated sufficient funding to the department for the purposes of this article. The Director of Health Services shall file a written statement with the Secretary of the Senate and with the Chief Clerk of the Assembly certifying the lack

of funding within 10 days after enactment of the Budget Act for that fiscal year.

(c) The department shall report to the Legislature by July 1, 2002, regarding the success of the pilot program, including, but not limited to, implementation problems, if any, and recommendations, if any, for improving the program.

(d) This article 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.

112295. Except for regulations necessary to implement the pilot program as set forth in subdivision (b) of Section 112292, this article shall not be construed to confer any new regulatory responsibilities or authority to develop control and management strategies.

CHAPTER 771

An act to amend Section 12002 of, and to add Section 12003.1 to, the Fish and Game Code, relating to fish and game.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. The Legislature finds and declares that the knowing and intentional taking of mammals, birds, and fish in excess of that permitted by law is a serious offense warranting special consideration by law enforcement and the judiciary. It is the intent of the Legislature that any knowing and intentional violation of the Fish and Game Code be diligently pursued and fully adjudicated.

SEC. 2. Section 12002 of the Fish and Game Code is amended to read:

12002. (a) Unless otherwise provided, the punishment for a violation of this code that is a misdemeanor is a fine of not more than one thousand dollars ($1,000), imprisonment in the county jail for not more than six months, or both the fine and imprisonment.

(b) The punishment for a violation of any of the following provisions is a fine of not more than two thousand dollars ($2,000), imprisonment in the county jail for not more than one year, or both the fine and imprisonment:

(1) Section 1059.
(2) Subdivision (d) of Section 4004.
(3) Section 4600.
(4) Paragraph (1) or (2) of subdivision (a) of Section 5650.
(5) A first violation of Section 8670.
(6) Section 10500.
(7) Section 3005.9.

(8) A violation of commission regulations which is discovered pursuant to Section 3005.91 or 3005.92.

(9) Unless a greater punishment is otherwise provided, a violation subject to subdivision (a) of Section 12003.1.

(c) (1) A license or permit issued pursuant to this code to a defendant who fails to appear at a court hearing for a violation of this code, or who fails to pay a fine imposed pursuant to this code, shall be immediately suspended. The license or permit shall not be reinstated or renewed, and no other license or permit shall be issued to that person pursuant to this code, until the court proceeding is completed or the fine is paid.

(2) This subdivision does not apply to any violation of Section 1052, 1059, 1170, 3005.9, 3005.91, 3005.92, 5650, 5653.9, 6454, 6650, or 6653.5.

SEC. 3. Section 12003.1 is added to the Fish and Game Code, to read:

12003.1. (a) Unless a minimum punishment is otherwise provided, the punishment for the knowing and intentional taking of a mammal, bird, or fish in excess of the quantity permitted by other provisions of this code or regulations adopted pursuant thereto, not in compliance with size or sex limitations in other provisions of this code or regulations adopted pursuant thereto, or from which only external body parts, including, but not limited to, antlers, horns, hides, feathers, or fins, are removed for use in violation of this code or regulations adopted pursuant thereto, shall be not less than two hundred fifty dollars ($250) for a first violation and not less than five hundred dollars ($500) and imprisonment in the county jail for not less than 30 days for a second or subsequent violation. The court shall apply not less than the minimum punishment as specified in this subdivision except in those cases where the court determines that, as to the imprisonment sentence only, the interests of justice would best be served by granting probation or suspending the imposition or execution of imprisonment sentence.

(b) 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 may impose as a condition of that probation that the person perform not more than 100 hours of community service in the county in which the violation occurred. To the extent practicable, the service shall involve work relating to natural resources. The service shall be performed during a time that does not interfere with the person's school attendance or employment. If the court requires a person to perform community service under this subdivision, that person shall also be required to attend a hunter safety course as described in Section 3051. The person, and not the court, shall be responsible for paying all fees and costs related to the course.

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 772

An act to amend Section 467.5 of the Business and Professions Code, to amend Section 1775.10 of the Code of Civil Procedure, to amend and renumber the heading of Chapter 2 (commencing with Section 1150) of Division 9 of, to add Chapter 2 (commencing with Section 1115) to Division 9 of, and to repeal Sections 1152.5 and 1152.6 of, the Evidence Code, to amend Sections 66032 and 66033 of the Government Code, to amend Sections 10089.80 and 10089.82 of the Insurance Code, to amend Section 65 of the Labor Code, and to amend Section 350 of the Welfare and Institutions Code, relating to mediation.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. Section 467.5 of the Business and Professions Code is amended to read:

467.5. Notwithstanding the express application of Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code to mediations, all proceedings conducted by a program funded pursuant to this chapter, including, but not limited to, arbitrations and conciliations, are subject to Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code.

SEC. 2. Section 1775.10 of the Code of Civil Procedure is amended to read:

1775.10. All statements made by the parties during the mediation shall be subject to Sections 703.5 and 1152, and Chapter 2 (commencing with Section 1115) of Division 9, of the Evidence Code.

SEC. 3. Chapter 2 (commencing with Section 1115) is added to Division 9 of the Evidence Code, to read:

CHAPTER 2. MEDIATION

1115. For purposes of this chapter:

(a) "Mediation" means a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement.

(b) "Mediator" means a neutral person who conducts a mediation. "Mediator" includes any person designated by a mediator either to assist in the mediation or to communicate with the participants in preparation for a mediation.

(c) "Mediation consultation" means a communication between a person and a mediator for the purpose of initiating, considering, or reconvening a mediation or retaining the mediator.

1116. (a) Nothing in this chapter expands or limits a court's authority to order participation in a dispute resolution proceeding. Nothing in this chapter authorizes or affects the enforceability of a contract clause in which parties agree to the use of mediation.

(b) Nothing in this chapter makes admissible evidence that is inadmissible under Section 1152 or any other statute.

1117. (a) Except as provided in subdivision (b), this chapter applies to a mediation as defined in Section 1115.

(b) This chapter does not apply to either of the following:

(1) A proceeding under Part 1 (commencing with Section 1800) of Division 5 of the Family Code or Chapter 11 (commencing with Section 3160) of Part 2 of Division 8 of the Family Code.

(2) A settlement conference pursuant to Rule 222 of the California Rules of Court.

1118. An oral agreement "in accordance with Section 1118" means an oral agreement that satisfies all of the following conditions:

(a) The oral agreement is recorded by a court reporter, tape recorder, or other reliable means of sound recording.

(b) The terms of the oral agreement are recited on the record in the presence of the parties and the mediator, and the parties express on the record that they agree to the terms recited.

(c) The parties to the oral agreement expressly state on the record that the agreement is enforceable or binding or words to that effect.

(d) The recording is reduced to writing and the writing is signed by the parties within 72 hours after it is recorded.

1119. Except as otherwise provided in this chapter:

(a) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(b) No writing, as defined in Section 250, that is prepared for the purpose of, in the course of, or pursuant to, a mediation or a

mediation consultation, is admissible or subject to discovery, and disclosure of the writing shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(c) All communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential.

1120. (a) Evidence otherwise admissible or subject to discovery outside of a mediation or a mediation consultation shall not be or become inadmissible or protected from disclosure solely by reason of its introduction or use in a mediation or a mediation consultation.

(b) This chapter does not limit any of the following:

(1) The admissibility of an agreement to mediate a dispute.

(2) The effect of an agreement not to take a default or an agreement to extend the time within which to act or refrain from acting in a pending civil action.

(3) Disclosure of the mere fact that a mediator has served, is serving, will serve, or was contacted about serving as a mediator in a dispute.

1121. Neither a mediator nor anyone else may submit to a court or other adjudicative body, and a court or other adjudicative body may not consider, any report, assessment, evaluation, recommendation, or finding of any kind by the mediator concerning a mediation conducted by the mediator, other than a report that is mandated by court rule or other law and that states only whether an agreement was reached, unless all parties to the mediation expressly agree otherwise in writing, or orally in accordance with Section 1118.

1122. (a) A communication or a writing, as defined in Section 250, that is made or prepared for the purpose of, or in the course of, or pursuant to, a mediation or a mediation consultation, is not made inadmissible, or protected from disclosure, by provisions of this chapter if either of the following conditions is satisfied:

(1) All persons who conduct or otherwise participate in the mediation expressly agree in writing, or orally in accordance with Section 1118, to disclosure of the communication, document, or writing.

(2) The communication, document, or writing was prepared by or on behalf of fewer than all the mediation participants, those participants expressly agree in writing, or orally in accordance with Section 1118, to its disclosure, and the communication, document, or writing does not disclose anything said or done or any admission made in the course of the mediation.

(b) For purposes of subdivision (a), if the neutral person who conducts a mediation expressly agrees to disclosure, that agreement also binds any other person described in subdivision (b) of Section 1115.

1123. A written settlement agreement prepared in the course of, or pursuant to, a mediation, is not made inadmissible, or protected from disclosure, by provisions of this chapter if the agreement is signed by the settling parties and any of the following conditions are satisfied:

(a) The agreement provides that it is admissible or subject to disclosure, or words to that effect.

(b) The agreement provides that it is enforceable or binding or words to that effect.

(c) All parties to the agreement expressly agree in writing, or orally in accordance with Section 1118, to its disclosure.

(d) The agreement is used to show fraud, duress, or illegality that is relevant to an issue in dispute.

1124. An oral agreement made in the course of, or pursuant to, a mediation is not made inadmissible, or protected from disclosure, by the provisions of this chapter if any of the following conditions are satisfied:

(a) The agreement is in accordance with Section 1118.

(b) The agreement is in accordance with subdivisions (a), (b), and (d) of Section 1118, and all parties to the agreement expressly agree, in writing or orally in accordance with Section 1118, to disclosure of the agreement.

(c) The agreement is in accordance with subdivisions (a), (b), and (d) of Section 1118, and the agreement is used to show fraud, duress, or illegality that is relevant to an issue in dispute.

1125. (a) For purposes of confidentiality under this chapter, a mediation ends when any one of the following conditions is satisfied:

(1) The parties execute a written settlement agreement that fully resolves the dispute.

(2) An oral agreement that fully resolves the dispute is reached in accordance with Section 1118.

(3) The mediator provides the mediation participants with a writing signed by the mediator that states that the mediation is terminated, or words to that effect, which shall be consistent with Section 1121.

(4) A party provides the mediator and the other mediation participants with a writing stating that the mediation is terminated, or words to that effect, which shall be consistent with Section 1121. In a mediation involving more than two parties, the mediation may continue as to the remaining parties or be terminated in accordance with this section.

(5) For 10 calendar days, there is no communication between the mediator and any of the parties to the mediation relating to the dispute. The mediator and the parties may shorten or extend this time by agreement.

(b) For purposes of confidentiality under this chapter, if a mediation partially resolves a dispute, mediation ends when either of the following conditions is satisfied:

(1) The parties execute a written settlement agreement that partially resolves the dispute.

(2) An oral agreement that partially resolves the dispute is reached in accordance with Section 1118.

(c) This section does not preclude a party from ending a mediation without reaching an agreement. This section does not otherwise affect the extent to which a party may terminate a mediation.

1126. Anything said, any admission made, or any writing that is inadmissible, protected from disclosure, and confidential under this chapter before a mediation ends, shall remain inadmissible, protected from disclosure, and confidential to the same extent after the mediation ends.

1127. If a person subpoenas or otherwise seeks to compel a mediator to testify or produce a writing, as defined in Section 250, and the court or other adjudicative body determines that the testimony or writing is inadmissible under this chapter, or protected from disclosure under this chapter, the court or adjudicative body making the determination shall award reasonable attorney's fees and costs to the mediator against the person seeking the testimony or writing.

1128. Any reference to a mediation during any subsequent trial is an irregularity in the proceedings of the trial for the purposes of Section 657 of the Code of Civil Procedure. Any reference to a mediation during any other subsequent noncriminal proceeding is grounds for vacating or modifying the decision in that proceeding, in whole or in part, and granting a new or further hearing on all or part of the issues, if the reference materially affected the substantial rights of the party requesting relief.

SEC. 4. The heading of Chapter 2 (commencing with Section 1150) of Division 9 of the Evidence Code is amended and renumbered to read:

CHAPTER 3. OTHER EVIDENCE AFFECTED OR EXCLUDED BY EXTRINSIC POLICIES

SEC. 5. Section 1152.5 of the Evidence Code is repealed.

SEC. 6. Section 1152.6 of the Evidence Code is repealed.

SEC. 7. Section 66032 of the Government Code is amended to read:

66032. (a) Notwithstanding any provision of law to the contrary, all time limits with respect to an action shall be tolled while the mediator conducts the mediation, pursuant to this chapter.

(b) Mediations conducted by a mediator pursuant to this chapter that involve less than a quorum of a legislative body or a state body shall not be considered meetings of a legislative body pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), nor shall they be considered meetings of a state body pursuant to the Bagley-Keene Open

Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2).

(c) Any action taken regarding mediation conducted pursuant to this chapter shall be taken in accordance with the provisions of current law.

(d) Ninety days after the commencement of the mediation, and every 90 days thereafter, the action shall be reactivated unless the parties to the action do either of the following:

(1) Arrive at a settlement and implement it in accordance with the provisions of current law.

(2) Agree by written stipulation to extend the mediation for another 90-day period.

(e) Section 703.5 and Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code apply to any mediation conducted pursuant to this chapter.

SEC. 8. Section 66033 of the Government Code is amended to read:

66033. (a) At the end of the mediation, the mediator shall file a report with the Office of Permit Assistance, consistent with Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code, containing each of the following:

(1) The title of the action.

(2) The names of the parties to the action.

(3) An estimate of the costs avoided, if any, because the parties used mediation instead of litigation to resolve their dispute.

(b) The sole purpose of the report required by this section is the collection of information needed by the office to prepare its report to the Legislature pursuant to Section 66036.

SEC. 9. Section 10089.80 of the Insurance Code is amended to read:

10089.80. (a) The representatives of the insurer shall know the facts of the case and be familiar with the allegations of the complainant. The insurer or the insurer's representative shall produce at the settlement conference a copy of the policy and all documents from the claims file relevant to the degree of loss, value of the claim, and the fact or extent of damage.

The insured shall produce, to the extent available, all documents relevant to the degree of loss, value of the claim, and the fact or extent of damage.

The mediator may also order production of other documents that the mediator determines to be relevant to the issues under mediation. If a party declines to comply with that order, the mediator may appeal to the commissioner for a determination of whether the documents requested should be produced. The commissioner shall make a determination within 21 days. However, the party ordered to produce the documents shall not be required to produce while the issue is before the commissioner in this 21-day period. If the ruling is in favor of production, any insurer that is subject to an order to

participate in mediation issued under subdivision (a) of Section 10089.75 shall comply with the order to produce. Insureds, and those insurers that are not subject to an order to participate in mediation, shall produce the documents or decline to participate further in the mediation after a ruling by the commissioner requiring the production of those other documents. Declination of mediation by the insurer under this section may be considered by the commissioner in exercising authority under subdivision (a) of Section 10089.75.

The mediator shall have the authority to protect from disclosure information that the mediator determines to be privileged, including, but not limited to, information protected by the attorney-client or work-product privileges, or to be otherwise confidential.

(b) The mediator shall determine prior to the mediation conference whether the insured will be represented by counsel at the mediation. The mediator shall inform the insurer whether the insured will be represented by counsel at the mediation conference. If the insured is represented by counsel at the mediation conference, the insurer's counsel may be present. If the insured is not represented by counsel at the mediation conference, then no counsel may be present.

(c) Section 703.5 and Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code apply to a mediation conducted under this chapter.

(d) The statements made by the parties, negotiations between the parties, and documents produced at the mediation are confidential. However, this confidentiality shall not restrict the access of the department to documents or other information the department seeks in order to evaluate the mediation program or to comply with reporting requirements. This subdivision does not affect the discoverability or admissibility of documents that are otherwise discoverable or admissible.

SEC. 10. Section 10089.82 of the Insurance Code is amended to read:

10089.82. (a) An insured may not be required to use the department's mediation process. An insurer may not be required to use the department's mediation process, except as provided in Section 10089.75.

(b) Neither the insurer nor the insured is required to accept an agreement proposed during the mediation.

(c) If the parties agree to a settlement agreement, the insured will have three business days to rescind the agreement. Notwithstanding Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code, if the insured rescinds the agreement, it may not be admitted in evidence or disclosed unless the insured and all other parties to the agreement expressly agree to its disclosure. If the agreement is not rescinded by the insured, it is binding on the insured

and the insurer, and acts as a release of all specific claims for damages known at the time of the mediation presented and agreed upon in the mediation conference. If counsel for the insured is present at the mediation conference and a settlement is agreed upon that is signed by the insured's counsel, the agreement is immediately binding on the insured and may not be rescinded.

(d) This section does not affect rights under existing law for claims for damage that were undetected at the time of the settlement conference.

(e) All settlements reached as a result of department-referred mediation shall address only those issues raised for the purpose of resolution. Settlements and any accompanying releases are not effective to settle or resolve any claim not addressed by the mediator for the purpose of resolution, nor any claim that the insured may have related to the insurer's conduct in handling the claim.

Referral to mediation or the pendency of a mediation under this article is not a basis to prevent or stay the filing of civil litigation arising in whole or in part out of the same facts. Any applicable statute of limitations is tolled for the number of days beginning from the referral to mediation until the date on which the mediation is either completed or declined, or the date on which the insured fails to appear for a scheduled mediation for the second time, or, in the event that a settlement is completed, the expiration of any applicable three business day cooling off period.

SEC. 11. Section 65 of the Labor Code is amended to read:

65. The department may investigate and mediate labor disputes providing any bona fide party to this type of dispute requests intervention by the department and the department may proffer its services to both parties when work stoppage is threatened and neither party requests intervention. In the interest of preventing labor disputes the department shall endeavor to promote sound union-employer relationships. The department may arbitrate or arrange for the selection of boards of arbitration on such terms as all of the bona fide parties to the dispute may agree upon. Any decision or award arising out of an arbitration conducted pursuant to this section is a public record. Section 703.5 and Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code apply to a mediation conducted by the California State Mediation and Conciliation Service, and any person conducting the mediation. All other records of the department relating to labor disputes are confidential.

SEC. 12. Section 350 of the Welfare and Institutions Code is amended to read:

350. (a) (1) The judge of the juvenile court shall control all proceedings during the hearings with a view to the expeditious and effective ascertainment of the jurisdictional facts and the ascertainment of all information relative to the present condition and future welfare of the person upon whose behalf the petition is

brought. Except where there is a contested issue of fact or law, the proceedings shall be conducted in an informal nonadversary atmosphere with a view to obtaining the maximum cooperation of the minor upon whose behalf the petition is brought and all persons interested in his or her welfare with any provisions that the court may make for the disposition and care of the minor.

(2) Each juvenile court is encouraged to develop a dependency mediation program to provide a problem-solving forum for all interested persons to develop a plan in the best interests of the child, emphasizing family preservation and strengthening. The Legislature finds that mediation of these matters assists the court in resolving conflict, and helps the court to intervene in a constructive manner in those cases where court intervention is necessary. Notwithstanding any other provision of law, no person, except the mediator, who is required to report suspected child abuse pursuant to the Child Abuse and Neglect Reporting Act (Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code), shall be exempted from those requirements under Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code because he or she agreed to participate in a dependency mediation program established in the juvenile court.

If a dependency mediation program has been established in a juvenile court, and if mediation is requested by any person who the judge or referee deems to have a direct and legitimate interest in the particular case, or on the court's own motion, the matter may be set for confidential mediation to develop a plan in the best interests of the child, utilizing resources within the family first and within the community if required.

(b) The testimony of a 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.

(c) At any hearing in which the probation department bears the burden of proof, after the presentation of evidence on behalf of the probation department and the minor has been closed, the court, on motion of the minor, parent, or guardian, or on its own motion, shall

order whatever action the law requires of it if the court, upon weighing all of the evidence then before it, finds that the burden of proof has not been met. That action includes, but is not limited to, the dismissal of the petition and release of the minor at a jurisdictional hearing, the return of the minor at an out-of-home review held prior to the permanency planning hearing, or the termination of jurisdiction at an in-home review. If the motion is not granted, the parent or guardian may offer evidence without first having reserved that right.

CHAPTER 773

An act to add Section 6364.5 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. Section 6364.5 is added to the Revenue and Taxation Code, to read:

6364.5. (a) There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, any container used to collect or store human whole blood, plasma, blood products, or blood derivatives that are exempt from taxation pursuant to Section 33, including, but not limited to, blood collection units and blood pack units.

(b) For purposes of this section, "blood collection units" and "blood pack units" include all items that form an integral, interconnected package that, when sold to plasmapheresis centers and blood banks, are used to collect blood or blood components, which are then sold together with the bags and tubing in which they are contained. Blood pack units consist of a plastic bag or bags, tubing, and a needle. Blood collection units are either a manual system that includes a needle, multiple bags, a bag containing saline solution, tubing, filters, grommets, and a pooling bag or an automated system that consists of a needle, a bag of anticoagulant, tubing, a plastic bowl containing a stainless steel centrifuge and a pooling bag. Blood collection units and blood pack units also include plastic bags and tubing sold to plasmapheresis centers when those centers use them to collect blood plasma or platelets and then sell the plasma or platelets together with the bags and tubing in which they are contained.

SEC. 2. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall

not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this act.

CHAPTER 774

An act to amend Sections 23355.1, 24045.15, and 25501 of, to amend and repeal Section 25658.4 of, and to add Section 25758.5 to, the Business and Professions Code, and to add Section 172p to the Penal Code, relating to alcoholic beverages.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. Section 23355.1 of the Business and Professions Code is amended to read:

23355.1. Notwithstanding any other provision of this division, the following acts are authorized:

(a) Deliveries of distilled spirits by a licensee to a retail licensee may be made from the vendor's licensed premises or from a warehouse located within the county in which the vendor's licensed premises are located except as permitted by Section 23383. Deliveries to a licensed importer may also be made from any point outside the state.

(b) A distilled spirits manufacturer, distilled spirits manufacturer's agent, distilled spirits rectifier general, or rectifier may store, bottle, cut, blend, mix, flavor, color, label, and package distilled spirits owned by another distilled spirits manufacturer, distilled spirits manufacturer's agent, distilled spirits rectifier general, rectifier, or a distilled spirits wholesaler, and may deliver those distilled spirits from the premises where stored, bottled, cut, blended, mixed, flavored, colored, labeled, or packaged, or from a warehouse located in the same county as that premises for the account of the owner of those distilled spirits to any licensee that owner would be authorized to deliver to under his or her own license, except to a retail licensee.

(c) A distilled spirits manufacturer, distilled spirits manufacturer's agent, distilled spirits rectifier general, rectifier, or distilled spirits wholesaler may store and deliver distilled spirits for the account of another licensee who would be authorized to make the

delivery under his or her own license, except that licensee shall not make a delivery to a retail licensee on behalf of another licensee.

(d) A retail off-sale licensee with annual United States auction sales revenues of at least five hundred million dollars ($500,000,000) may sell wine at any auction held in compliance with Section 2328 of the Commercial Code to consumers and retail licensees and may deliver wines sold to any purchaser at that auction from the vendor's licensed premises or from any other storage facility.

SEC. 2. Section 24045.15 of the Business and Professions Code, as added by Section 1 of Chapter 383 of the Statutes of 1997, is amended 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. The wine shall bear the brand name of the producing winery. 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. In order to avoid confusion between the corporation and any winery whose name also includes the designation of the named AVA, any advertising or solicitation for the sale of wine under this license by the corporation shall include a statement disclosing that the corporation is a nonprofit agricultural organization whose members include individual winegrowers or

grapegrowers and whose purpose is to promote its agricultural region and improve its grapes and wines. This advertising or solicitation shall also include a complete roster of the corporation's members and a list of the brand names, varieties, and vintages of the wines offered for sale. 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. 2.3. Section 25501 of the Business and Professions Code is amended to read:

25501. No manufacturer, bottler, importer, or wholesaler of products of the brewing industry shall:

(a) Furnish, give, rent, lend, or sell, directly or indirectly, any equipment, fixtures, or supplies, other than alcoholic beverages, to any person engaged in operating, owning, or maintaining any on-sale premises where alcoholic beverages are sold for consumption on the premises. This subdivision shall not prohibit the furnishing of draft beer pumps and iceboxes to those persons who operate on a temporary basis. Notwithstanding any other provision of this division, a manufacturer, bottler, importer, or wholesaler of products of the brewing industry may furnish, give, rent, lend, or sell, directly or indirectly, paper beverage coasters less than 25 square inches in size and having a value of less than five cents ($0.05) per coaster or brand-identified acrylic table tent holders to any person engaged in operating, owning, or maintaining any on-sale premises where alcoholic beverages are sold for consumption on the premises.

(b) Directly or indirectly, hold the ownership or any interest, by stock ownership or otherwise, in any firm, corporation, partnership, or business, furnishing, supplying, or dealing in any office, store, or restaurant furnishings or equipment, other than signs for interior use or supplies authorized to be given under this division to any person engaged in operating, owning, or maintaining any on-sale premises.

(c) Notwithstanding any provision of this section, the holder of a beer and wine wholesaler's license may manufacture, distribute, and sell any lawful product to any person engaged in operating, owning, or maintaining any on-sale premises where alcoholic beverages are sold for consumption on the premises, provided that these products are sold by the holder of the beer and wine wholesaler's license to the on-sale licensee at a price not less than the current market price for the product.

SEC. 3. Section 25658.4 of the Business and Professions Code, as added by Section 4 of Chapter 726 of the Statutes of 1991, is amended to read:

25658.4. (a) On and after January 1, 1992, no clerk shall make an off sale of alcoholic beverages unless the clerk executes under penalty of perjury on the first day he or she makes that sale an application and acknowledgment. The application and acknowledgment shall be in a form understandable to the clerk.

(1) The department shall specify the form of the application and acknowledgment, which shall include at a minimum a summary of this division pertaining to the following:

(A) The prohibitions contained in Sections 25658 and 25658.5 pertaining to the sale to, and purchase of, alcoholic beverages by persons under 21 years of age.

(B) Bona fide evidence of majority as provided in Section 25660.

(C) Hours of operation as provided in Article 2 (commencing with Section 25630) of Chapter 16.

(D) The prohibitions contained in subdivision (a) of Section 25602 and Section 25602.1 pertaining to sales to an intoxicated person.

(E) Sections 23393 and 23394 as they pertain to on-premises consumption of alcoholic beverages in an off-sale premises.

(F) The requirements and prohibitions contained in Section 25659.5 pertaining to sales of keg beer for consumption off licensed premises.

(2) The application and acknowledgment shall also include a statement that the clerk has read and understands the summary, a statement that the clerk has never been convicted of violating this division or, if convicted, an explanation of the circumstances of each conviction, and a statement that the application and acknowledgment is executed under penalty of perjury.

(3) The licensee shall keep the executed application and acknowledgment on the premises at all times and available for inspection by the department. A licensee with more than one licensed off-sale premises in the state may comply with this subdivision by maintaining an executed application and acknowledgment at a designated licensed premises, regional office, or headquarters office in the state. An executed application and acknowledgment maintained at the designated locations shall be valid for all licensed off-sale premises owned by the licensee. Any licensee maintaining an application and acknowledgment at a designated site other than the individual licensed off-sale premises shall notify the department in advance and in writing of the site where the application and acknowledgment shall be maintained and available for inspection. A licensee electing to maintain application and acknowledgments at a designated site other than the licensed premises shall maintain at each licensed premises a notice of where the executed application and acknowledgments are located. Any licensee with more than one licensed off-sale premises who elects to maintain the application and acknowledgments at a designated site other than each licensed premises shall provide the department, upon written demand, a copy of any employee's executed application and acknowledgment within 10 business days. A violation of this subdivision by a licensee constitutes grounds for discipline by the department.

(b) On and after January 1, 1992, the licensee shall post a notice that contains and describes, in concise terms, prohibited sales of

alcoholic beverages, a statement that the off-sale seller will refuse to make a sale if the seller reasonably suspects that the Alcoholic Beverage Control Act may be violated, and a statement that a minor who purchases or attempts to purchase alcoholic beverages is subject to suspension or delay in the issuance of his or her driver's license pursuant to Section 13202.5 of the Vehicle Code. The notice shall be posted at an entrance or at a point of sale in the licensed premises or in any other location that is visible to purchasers of alcoholic beverages and to the off-sale seller.

(c) As used in this section:

(1) "Off-sale seller" means any person holding a retail off-sale license issued by the department and any person employed by that licensee who in the course of that employment sells alcoholic beverages.

(2) "Clerk" means an off-sale seller who is not a licensee.

SEC. 3.5. Section 25658.4 of the Business and Professions Code, as added by Section 4 of Chapter 726 of the Statutes of 1991, is amended to read:

25658.4. (a) On and after January 1, 1992, no clerk shall make an off sale of alcoholic beverages unless the clerk executes under penalty of perjury on the first day he or she makes that sale an application and acknowledgment. The application and acknowledgment shall be in a form understandable to the clerk.

(1) The department shall specify the form of the application and acknowledgment which shall include at a minimum a summary of this division pertaining to the following:

(A) The prohibitions contained in Sections 25658 and 25658.5 pertaining to the sale to, and purchase of, alcoholic beverages by persons under 21 years of age.

(B) Bona fide evidence of majority as provided in Section 25660.

(C) Hours of operation as provided in Article 2 (commencing with Section 25630) of Chapter 16.

(D) The prohibitions contained in subdivision (a) of Section 25602 and Section 25602.1 pertaining to sales to an intoxicated person.

(E) Sections 23393 and 23394 as they pertain to on-premises consumption of alcoholic beverages in an off-sale premises.

(F) The requirements and prohibitions contained in Section 25659.5 pertaining to sales of keg beer for consumption off licensed premises.

(2) The application and acknowledgment shall also include a statement that the clerk has read and understands the summary, a statement that the clerk has never been convicted of violating this division or, if convicted, an explanation of the circumstances of each conviction, and a statement that the application and acknowledgment is executed under penalty of perjury.

(3) The licensee shall keep the executed application and acknowledgment on the premises at all times and available for inspection by the department. A licensee with more than one

licensed off-sale premises in the state may comply with this subdivision by maintaining an executed application and acknowledgment at a designated licensed premises, regional office, or headquarters office in the state. An executed application and acknowledgment maintained at the designated locations shall be valid for all licensed off-sale premises owned by the licensee. Any licensee maintaining an application and acknowledgment at a designated site other than the individual licensed off-sale premises shall notify the department in advance and in writing of the site where the application and acknowledgment shall be maintained and available for inspection. A licensee electing to maintain application and acknowledgments at a designated site other than the licensed premises shall maintain at each licensed premises a notice of where the executed application and acknowledgments are located. Any licensee with more than one licensed off-sale premises who elects to maintain the application and acknowledgments at a designated site other than each licensed premises shall provide the department, upon written demand, a copy of any employee's executed application and acknowledgment within 10 business days. A violation of this subdivision by a licensee constitutes grounds for discipline by the department.

(b) On and after January 1, 1992, the licensee shall post a notice that contains and describes, in concise terms, prohibited sales of alcoholic beverages, a statement that the off-sale seller will refuse to make a sale if the seller reasonably suspects that the Alcoholic Beverage Control Act may be violated, and a statement that a minor who purchases or attempts to purchase alcoholic beverages is subject to suspension or delay in the issuance of his or her driver's license pursuant to Section 13202.5 of the Vehicle Code. The notice shall be posted at an entrance or at a point of sale in the licensed premises or in any other location that is visible to purchasers of alcoholic beverages and to the off-sale seller.

(c) On and after January 1, 1998, a retail licensee shall post a notice that contains and describes, in concise terms, the fines and penalties for any violation of Section 25658, relating to the sale of alcoholic beverages to, or the purchase of alcoholic beverages by, any person under the age of 21 years.

(d) As used in this section:

(1) "Off-sale seller" means any person holding a retail off-sale license issued by the department and any person employed by that licensee who in the course of that employment sells alcoholic beverages.

(2) "Clerk" means an off-sale seller who is not a licensee.

(e) The department may adopt rules and appropriate fees for licensees that it determines necessary for the administration of this section.

SEC. 4. Section 25658.4 of the Business and Professions Code, as added by Section 3 of Chapter 695 of the Statutes of 1990, is repealed.

SEC. 5. Section 25758.5 is added to the Business and Professions Code, to read:

25758.5. In any hearing before the department pursuant to Section 24300, the department may pay any person appearing as a witness at the hearing at the request of the department pursuant to a subpoena, his or her actual, necessary, and reasonable travel, food, and lodging expenses, not to exceed the amount authorized for state employees.

SEC. 6. Section 172p is added to the Penal Code, to read:

172p. The provisions of Section 172a shall not apply to the sale or exposing or offering for sale of beer or wine by any on-sale licensee under the Alcoholic Beverage Control Act whose licensed premises are situated more than 1,200 feet from the boundaries of Whittier College in the City of Whittier.

SEC. 7. Section 3.5 of this bill incorporates amendments to Section 25658.4 of the Business and Professions Code, as added by Section 4 of Chapter 726 of the Statutes of 1991, proposed by both this bill and SB 805. 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 25658.4 of the Business and Professions Code, as added by Section 4 of Chapter 726 of the Statutes of 1991, and (3) this bill is enacted after SB 805, in which case Section 3 of this bill shall not become operative.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 775

An act to amend Section 13260 of the Water Code, relating to water.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. Section 13260 of the Water Code is amended to read:

13260. (a) All of the following persons shall file with the appropriate regional board a report of the discharge, containing the information which may be required by the regional board:

(1) Any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.

(2) Any person who is a citizen, domiciliary, or political agency or entity of this state discharging waste, or proposing to discharge waste, outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region.

(3) Any person operating, or proposing to construct, an injection well.

(b) No report of waste discharge need be filed pursuant to subdivision (a) if the requirement is waived pursuant to Section 13269.

(c) Every person subject to subdivision (a) shall file with the appropriate regional board a report of waste discharge relative to any material change or proposed change in the character, location, or volume of the discharge.

(d) (1) Each person for whom waste discharge requirements have been prescribed pursuant to Section 13263 shall submit an annual fee not to exceed ten thousand dollars ($10,000) according to a reasonable fee schedule established by the state board. Fees shall be calculated on the basis of total flow, volume, number of animals, or area involved.

(2) (A) Subject to subparagraph (B), any fees collected pursuant to this section shall be deposited in the Waste Discharge Permit Fund which is hereby created. The money in the fund is available for expenditure by the state board, upon appropriation by the Legislature, for the purposes of carrying out this division.

(B) (i) Notwithstanding subparagraph (A), the fees collected pursuant to this section from storm water dischargers that are subject to a general industrial or construction storm water permit under the national pollutant discharge elimination system (NPDES) shall be separately accounted for in the Waste Discharge Permit Fund.

(ii) Not less than 50 percent of the money in the Waste Discharge Permit Fund that is separately accounted for pursuant to clause (i) is available, upon appropriation by the Legislature, for expenditure by the regional board with jurisdiction over the permitted industry or construction site that generated the fee to carry out storm water programs in the region.

(iii) Each regional board that receives money pursuant to clause (ii) shall spend not less than 50 percent of that money solely on storm water inspection and regulatory compliance issues associated with industrial and construction storm water programs.

(3) Any person who would be required to pay the annual fee prescribed by paragraph (1) for waste discharge requirements applicable to discharges of solid waste, as defined in Section 40191 of

the Public Resources Code, at a waste management unit that is also regulated under Division 30 (commencing with Section 40000) of the Public Resources Code, and who is or will be subject to the fee imposed pursuant to Section 46801 of the Public Resources Code in the same fiscal year, shall be entitled to a waiver of the annual fee for the discharge of solid waste at the waste management unit imposed by paragraph (1) upon verification by the state board of payment of the fee imposed by Section 48000 of the Public Resources Code, and provided that the fee established pursuant to Section 48000 of the Public Resources Code generates revenues sufficient to fund the programs specified in Section 48004 of the Public Resources Code and the amount appropriated by the Legislature for those purposes is not reduced.

(e) Each report of waste discharge for a new discharge submitted under this section shall be accompanied by a fee equal in amount to the annual fee for the discharge. If waste discharge requirements are issued, the fee shall serve as the first annual fee. If waste discharge requirements are waived pursuant to Section 13269, all or part of the fee shall be refunded.

(f) (1) On or before January 1, 1990, the state board shall adopt, by emergency regulations, a schedule of fees authorized under subdivisions (d) and (j). The total revenue collected each year through annual and filing fees shall be set at an amount equal to the revenue levels set forth in the Budget Act for this activity. The state board shall automatically adjust the annual and filing fees each fiscal year to conform with the revenue levels set forth in the Budget Act for this activity. If the state board determines that the revenue collected during the preceding year was greater than, or less than, the revenue levels set forth in the Budget Act, the state board may further adjust the annual filing fees to compensate for the over and under collection of revenue.

(2) The emergency regulations adopted pursuant to this subdivision, or subsequent adjustments to the annual fees, shall be adopted by the state board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the state board, or adjustments to the annual fees made by the state board pursuant to this section, shall not be subject to review by the Office of Administrative Law and shall remain in effect until revised by the state board.

(g) The state board shall adopt regulations setting forth reasonable time limits within which the regional board shall

determine the adequacy of a report of waste discharge submitted under this section.

(h) Each report submitted under this section shall be sworn to, or submitted under penalty of perjury.

(i) The regulations adopted by the state board pursuant to subdivision (f) shall include a provision that annual fees shall not be imposed on those who pay fees under the National Pollutant Discharge Elimination System until the time when those fees are again due, at which time the fees shall become due on an annual basis.

(j) Facilities for confined animal feeding or holding operations, including dairy farms, which have been issued waste discharge requirements or exempted from waste discharge requirements prior to January 1, 1989, are exempt from subdivision (d). If the facility is required to file a report under subdivision (c) after January 1, 1989, the report shall be accompanied by a filing fee, to be established by the state board in accordance with subdivision (f), not to exceed two thousand dollars ($2,000), and the facility shall be exempt from any annual fee.

(k) Any person operating or proposing to construct an oil, gas, or geothermal injection well subject to paragraph (3) of subdivision (a), shall not be required to pay a fee pursuant to subdivision (d), if the injection well is regulated by the Division of Oil and Gas of the Department of Conservation, in lieu of the appropriate California regional water quality control board, pursuant to the memorandum of understanding, entered into between the state board and the Department of Conservation on May 19, 1988. This subdivision shall remain operative until the memorandum of understanding is revoked by the state board or the Department of Conservation.

(*l*) In addition to the report required by subdivision (a), before any person discharges mining waste, the person shall first submit the following to the regional board:

(1) A report on the physical and chemical characteristics of the waste that could affect its potential to cause pollution or contamination. The report shall include the results of all tests required by regulations adopted by the board, any test adopted by the Department of Toxic Substances Control pursuant to Section 25141 of the Health and Safety Code for extractable, persistent, and bioaccumulative toxic substances in a waste or other material, and any other tests that the state board or regional board may require, including, but not limited to, tests needed to determine the acid-generating potential of the mining waste or the extent to which hazardous substances may persist in the waste after disposal.

(2) A report that evaluates the potential of the discharge of the mining waste to produce, over the long term, acid mine drainage, the discharge or leaching of heavy metals, or the release of other hazardous substances.

(m) Except upon the written request of the regional board, a report of waste discharge need not be filed pursuant to subdivision

(a) or (c) by a user of recycled water that is being supplied by a supplier or distributor of recycled water for whom a master recycling permit has been issued pursuant to Section 13523.1.

CHAPTER 776

An act to amend Section 1276.5 of the Health and Safety Code, relating to health facilities.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. Section 1276.5 of the Health and Safety Code is amended to read:

1276.5. (a) The department shall adopt regulations setting forth the minimum number of equivalent nursing hours per patient required in skilled nursing and intermediate care facilities, subject to the specific requirements of Section 14110.7 of the Welfare and Institutions Code.

(b) (1) For the purposes of this section, "nursing hours" means the number of hours of work performed per patient day by aides, nursing assistants, or orderlies plus two times the number of hours worked per patient day by registered nurses and licensed vocational nurses (except directors of nursing in facilities of 60 or larger capacity) and, in the distinct part of facilities and freestanding facilities providing care for the developmentally disabled or mentally disordered, by licensed psychiatric technicians who perform direct nursing services for patients in skilled nursing and intermediate care facilities, except when the skilled nursing and intermediate care facility is licensed as a part of a state hospital.

(2) Concurrent with implementation of the first year of rates established under the Medi-Cal Long Term Care Reimbursement Act of 1990 (Article 3.8 (commencing with Section 14126) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code), for the purposes of this section, "nursing hours" means the number of hours of work performed per patient day by aides, nursing assistants, registered nurses, and licensed vocational nurses (except directors of nursing in facilities of 60 or larger capacity) and, in the distinct part of facilities and freestanding facilities providing care for the developmentally disabled or mentally disordered, by licensed psychiatric technicians who performed direct nursing services for patients in skilled nursing and intermediate care facilities, except when the skilled nursing and intermediate care facility is licensed as a part of a state hospital.

(c) Notwithstanding Section 1276, the department shall require the utilization of a registered nurse at all times if the department determines that the services of a skilled nursing and intermediate care facility require the utilization of a registered nurse.

(d) Except as otherwise provided by law, the administrator of an intermediate care facility/developmentally disabled, intermediate care facility/developmentally disabled habilitative, or an intermediate care facility/developmentally disabled—nursing shall be either a licensed nursing home administrator or a qualified mental retardation professional.

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 777

An act to amend Section 30796.7 of, and to add Sections 30796.9 and 30796.10 to, the Streets and Highways Code, relating to highways.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. The Legislature finds and declares that the first priority for financing seismic safety retrofitting of state-owned toll bridges shall be the six hundred fifty million dollars ($650,000,000) from the 1996 Seismic Retrofit Account in the Seismic Retrofit Bond Fund of 1996, as set forth in Section 8879.3 of the Government Code.

SEC. 2. Section 30796.7 of the Streets and Highways Code is amended to read:

30796.7. (a) Notwithstanding any other provision of law, the San Diego Association of Governments, on behalf of the state, may impose a toll on vehicles crossing the San Diego-Coronado Bridge. The toll shall be established by the association after conducting at least one public hearing.

(b) The authority of the commission relative to tolls on the bridge is hereby transferred to the San Diego Association of Governments.

All tolls on the bridge shall be at the rates established by the San Diego Association of Governments, except that at no time shall the rate of toll for class 1 vehicles exceed one dollar and fifty cents ($1.50) per vehicle.

(c) (1) The revenues from any tolls imposed on the bridge shall be used first for expenses related to the collection of tolls and operation of the bridge, including, but not limited to, reimbursement for any operating and retrofitting costs and, second, for improvements to the bridge and its approaches. Tolls shall be established at an amount which will generate revenue sufficient to meet the requirements set forth in this paragraph, as determined by the department. Maintenance of the bridge shall be funded by the state under Section 188.4.

(2) The revenues from any tolls imposed on the bridge may also be used for costs incurred by the San Diego Association of Governments in administering this section and for any of the following:

(A) Transportation services that either increase the capacity of the bridge and its approaches or reduce the demand for travel in the transportation corridor that includes the bridge.

(B) Alternative forms of transportation, within the transportation corridor that includes the bridge, that reduce congestion and air pollution, including, but not limited to, ferry service and public transit.

(C) Capital improvements and related expenditures within the transportation corridor for construction and maintenance of bikeways.

(d) For the purposes of this section, "transportation corridor" means the San Diego-Coronado Bridge and its approaches which extend from Route 5 in the City of San Diego to the North Island Naval Air Station via Route 282, and to the Naval Amphibious Base via Route 75 in the City of Coronado.

(e) All money deposited in the San Diego-Coronado Toll Bridge Revenue Fund prior to March 26, 1992, and not expended, encumbered, or programmed before January 1, 1994, is appropriated to the Controller for allocation to the San Diego Association of Governments for the purposes of paragraph (2) of subdivision (c).

(f) The San Diego Association of Governments shall include in the regional transportation improvement program, and every update thereof, an expenditure plan specifying the projects and programs that are to be funded with toll revenues.

(g) If the San Diego Association of Governments, on behalf of the state, imposes tolls pursuant to subdivision (a), it shall reimburse the department for costs incurred by the department in operating the bridge, collecting tolls, and performing other related services. The association and the department shall enter into an agreement which provides for the full reimbursement of the department for all operating costs.

(h) The San Diego Association of Governments shall prepare an annual audit of expenditures that are funded with toll revenues. The audit shall be funded solely with toll revenues and shall not include expenditures made by the department. The association shall review the annual financial report on state-owned toll bridges that is prepared by the department for revenues collected under this section.

SEC. 3. Section 30796.9 of the Streets and Highways Code, as added by Chapter 327 of the Statutes of 1997, is amended to read:

30796.9. (a) The San Diego Association of Governments shall deposit thirty-three million dollars ($33,000,000) in the Toll Bridge Seismic Retrofit Account in the State Transportation Fund.

(b) On or before January 1, 1998, the San Diego Association of Governments shall submit to the Legislature and the department a financial plan for the transfer of thirty-three million dollars ($33,000,000) on or before July 1, 2000, to the Toll Bridge Seismic Retrofit Account in the State Transportation Fund.

(c) Maintenance of the San Diego-Coronado Bridge shall be funded by the state pursuant to Section 188.4.

(d) Of the thirty-three million dollars ($33,000,000) in local funds to be paid by the San Diego Association of Governments as the local toll authority for the San Diego-Coronado Bridge, not less than ten million dollars ($10,000,000) shall be paid from local toll revenue reserve funds. The balance of funds shall be paid from toll bridge revenue bonds, as specified in Section 30796.10, supported by toll revenue. This revenue shall consist of the net toll revenue gained from shifting the cost of bridge maintenance to be funded by the state pursuant to Section 188.4 and by all or part of the remaining toll revenues.

SEC. 4. Section 30796.10 is added to the Streets and Highways Code, to read:

30796.10. (a) The San Diego Association of Governments may issue bonds payable from the revenues derived from the tolls imposed on the bridge. The bonds may be issued by the San Diego Association of Governments at any time, and from time to time payable from the revenues from the tolls. The bonds shall be referred to as "toll bridge revenue bonds." The association shall be an instrumentality of the state for the purposes of those issuances.

(b) The revenues from the tolls on the bridge shall be subject to a statutory lien in favor of the bondholders to secure all amounts due on the bonds and in favor of any provider of credit enhancement for the bonds to secure all amounts due to the provider with respect to those bonds. The lien shall immediately attach to the toll revenues and be effective, binding, and enforceable against the San Diego Association of Governments, its successors, creditors, and all others asserting the rights therein, irrespective of whether those parties have notice of the lien and without the need for any physical delivery, recordation, filing, or further act. The toll revenues shall remain

subject to the lien until all bonds are paid in full or provisions are made therefor. The bridge shall not become a free public bridge until that time.

(c) The liens on toll revenues created by this section shall be subject to expenditures for the collection of tolls, if those expenditures are not otherwise provided for by statute, but shall have priority over the use of any of the toll revenues for improvements undertaken pursuant to the authorization contained in subdivision (c) of Section 30796.7.

(d) Toll bridge revenue bonds shall be issued pursuant to a resolution adopted at any time, and from time to time, by the San Diego Association of Governments by a majority vote of the governing board of the association.

The San Diego Association of Governments may from time to time, issue bonds in accordance with the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code), for the purpose of constructing, improving, or equipping the bridge, or for any of the purposes authorized by Section 30796.7 for the expenditure of toll revenues. Operation of the bridge shall constitute an "enterprise" within the meaning of Section 54309 of the Government Code, and the San Diego Association of Governments shall constitute a "local agency" within the meaning of Section 54307 of the Government Code. Article 3 (commencing with Section 54380) of Chapter 6 of Part 1 of Division 2 of Title 5 of the Government Code shall not apply to the issuance and sale of bonds pursuant to this section. Instead, the San Diego Association of Governments shall authorize the issuance of bonds by resolution, which resolution shall specify all of the following:

(1) The purposes for which the bonds are to be issued.

(2) The maximum principal amount of the bonds.

(3) The maximum term for the bonds.

(e) The maximum rate of interest to be payable upon the bond which interest rates shall not exceed the maximum rate specified in Section 53531 of the Government Code. The rate may be either fixed or variable and shall be payable at the times and in the manner specified in the resolution.

(f) Interest on any bonds issued pursuant to this section shall at all times be free from state personal income tax and corporate income tax.

(g) Any bonds issued pursuant to this section are a legal investment for all trust funds; for the funds of insurance companies, commercial and savings banks, and trust companies; and for state school funds. Whenever any money or funds may, by any law now or hereafter enacted, be invested in bonds of cities, counties, school districts, or other districts within the state, those funds may be invested in the bonds issued pursuant to this section, and whenever bonds of cities, counties, school districts, or other districts within this state may, by any law now or hereafter enacted, be used as security

for the performance of any act or the deposit of any public money, the bonds issued pursuant to this section may be so used. The provisions of this section are in addition to all other laws relating to legal investments and shall be controlling as the latest expression of the Legislature with respect thereto.

(h) The State of California pledges and agrees with the holders of the bonds issued pursuant to this chapter, and with those parties who may enter into contracts with the San Diego Association of Governments pursuant to the provisions of this chapter, that the state will not limit, alter, or restrict the rights hereby vested in the San Diego Association of Governments to finance the toll bridge improvements and other projects and programs authorized by this chapter. The State of California pledges and agrees not to impair the terms of any agreements made with the holders of bonds, and with the parties who may enter into contracts with the San Diego Association of Governments pursuant to this chapter, and pledges and agrees not to impair the rights or remedies of the holders of any revenue bonds or any parties until the bonds, together with interest, are fully paid and discharged and any contracts are fully performed on the part of the San Diego Association of Governments.

(i) The San Diego Association of Governments may include the pledges made under this section in its revenue bonds.

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 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 778

An act to amend Sections 25200.2, 25218.2, 25218.9, 25404, and 25404.5 of, and to add Section 25201.4.1 to, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. Section 25200.2 of the Health and Safety Code is amended to read:

25200.2. (a) The department shall develop a permitting process for transportable hazardous waste treatment units for treating hazardous waste in accordance with the federal act and in accordance with this chapter for hazardous wastes that are not otherwise subject to the federal act. The permitting process shall require the units to be permitted pursuant to the regulations of the department for operation pursuant to a permit-by-rule, a hazardous waste facilities permit, or pursuant to the regulations of the department for operation under a standardized permit adopted pursuant to Section 25201.6, whichever the department determines to be appropriate, by regulation, depending on the nature of the treatment units and the type of hazardous waste to be treated, and without regard to whether the units are determined to be onsite or offsite treatment units.

(b) (1) The operator of a transportable hazardous waste treatment unit shall pay the same annual fee as facilities authorized to operate pursuant to a permit-by-rule specified in subdivision (a) of Section 25205.14. The operator of a unit is exempt from paying the facility fee specified in Section 25205.2 for any year or reporting period during which the unit was operating for any activity authorized under permit, except as specified in subdivision (b) of Section 25205.12.

(2) The department shall report on the actual costs of managing the transportable hazardous waste treatment units in the annual onsite treatment report required pursuant to subparagraph (D) of paragraph (3) of subdivision (a) of Section 25171.5. Notwithstanding paragraph (1), the Legislature may authorize the department to recover the costs to manage the transportable treatment units should the actual costs exceed the revenue raised by the fees specified in Section 25205.14.

(c) A transportable hazardous waste treatment unit operating pursuant to a hazardous waste facilities permit, a standardized permit, or pursuant to the department's regulations for operation under a permit-by-rule may operate at a facility for a period not to exceed one year. If the owner or operator of the transportable hazardous waste treatment unit shows cause, the department may authorize up to two extensions of this period, of six months duration, during which the transportable hazardous waste treatment unit may operate at the facility, if the department reviews the justification for the extension request after the first six-month period.

(d) Notwithstanding any other provision of this section, if, as of March 1, 1996, the department has not issued proposed regulations, or has not adopted emergency regulations, to implement the changes made to this section by the act adding this subdivision, until the department issues or adopts those regulations, the department shall regulate all transportable treatment units operating pursuant to a permit-by-rule on January 1, 1996, pursuant to the regulations adopted by the department with regard to permit-by-rule, and shall

regulate all transportable treatment units operating pursuant to a hazardous waste facilities permit on January 1, 1996, pursuant to the regulations providing for a standardized permit.

SEC. 2. Section 25201.4.1 is added to the Health and Safety Code, to read:

25201.4.1. (a) Except as provided in subdivision (c), any person subject to the notification requirements of Sections 25110.10, 25123.3, 25144.6, 25200.3, 25201.5, or 25201.14 shall only be required to submit the required notification to the CUPA, or, in those jurisdictions where there is no CUPA, to the officer or agency authorized pursuant to subdivision (f) of Section 25404.3 to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(b) Any person required to submit a notice pursuant to subdivision (a) is also required to submit the required notice to the department until (1) regulations promulgated by the Secretary for Environmental Protection establishing a unified program information collection and reporting system and standards are effective, (2) the regulations require a statewide data base system that will enable the department and the public to obtain the required information from all CUPAs or the authorized officers or agencies, and (3) the statewide data base system is in place and fully operational.

(c) A person conducting an activity that is not included within the scope of the hazardous waste element of the unified program, as specified in paragraph (1) of subdivision (c) of Section 25404, is required to submit a notice pursuant to Sections 25110.10, 25123.3, 25144.6, 25200.3, 25201.5, or 25201.14, but shall comply with any regulations that the department may adopt specifying notification requirements for those activities.

(d) Notwithstanding subdivision (*l*) of Section 25200.3, any person who has submitted a notification to the CUPA, or, in those jurisdictions where there is no CUPA, to the officer or agency authorized pursuant to subdivision (f) of Section 25404.3 to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404, pursuant to subdivision (a) of this section and subdivision (e) of Section 25200.3, shall be deemed to be operating pursuant to Section 25200.3, and, except as provided in Section 25404.5, shall be subject to the fee set forth in subdivision (b) of Section 25205.14 until the person submits a certification pursuant to subdivision (*l*) of Section 25200.3.

(e) Notwithstanding subdivision (j) of Section 25201.5, any person who has submitted a notification to the CUPA, or, in those jurisdictions where there is no CUPA, to the officer or agency authorized pursuant to subdivision (f) of Section 25404.3 to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404, pursuant to subdivision (a) of this section and paragraph (7) of subdivision (d)

of Section 25201.5, shall be deemed to be operating pursuant to Section 25201.5, and, except as provided in Section 25404.5, shall be subject to the fee set forth in subdivision (c) of Section 25205.14 until the person submits a certification pursuant to subdivision (j) of Section 25201.5.

SEC. 3. Section 25218.2 of the Health and Safety Code is amended to read:

25218.2. (a) Prior to commencing operations, a public agency, or its contractor, that intends to operate a household hazardous waste collection facility shall submit the following written information to the CUPA, or, in those jurisdictions where there is no CUPA, to the officer or agency authorized pursuant to subdivision (f) of Section 25404.3 to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404:

(1) A certification that the household hazardous waste collection facility will be operated in accordance with this article and with any other requirement that may be imposed by the department by regulation.

(2) All of the following information:

(A) The facility's name.

(B) The facility's location.

(C) The facility's generator identification number.

(D) The date that the facility will begin operation.

(E) The facility's operating schedule.

(b) In addition to the information required pursuant to paragraph (2) of subdivision (a), the public agency, or its contractor, shall also subsequently notify the CUPA, or, in those jurisdictions where there is no CUPA, the officer or agency authorized pursuant to subdivision (f) of Section 25404.3 to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404, of any significant change in the facility's operating schedule.

(c) The public agency, or its contractor, shall also submit the written information pursuant to subdivision (a), and notify the department pursuant to subdivision (b), until (1) regulations promulgated by the Secretary for Environmental Protection establishing a unified program information collection and reporting system and standards are effective, (2) the regulations require a statewide data base system that will enable the department and the public to obtain the required information from all CUPAs or the authorized officers or agencies, and (3) the statewide data base system is in place and fully operational.

SEC. 4. Section 25218.9 of the Health and Safety Code is amended to read:

25218.9. On or before October 1 of each year, a public agency, or its contractor, operating a household hazardous waste collection facility shall submit to the CUPA, or, in those jurisdictions where there is no CUPA, to the officer or agency authorized pursuant to subdivision (f) of Section 25404.3 to implement and enforce the

requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404, a copy of the completed California Integrated Waste Management Board Form 303, which is required to be submitted to that board for the prior fiscal year pursuant to regulations adopted by that board. The completed California Integrated Waste Management Board Form 303 shall also be submitted to the department until (1) regulations promulgated by the Secretary for Environmental Protection establishing a unified program information collection and reporting system and standards are effective, (2) the regulations require a statewide data base system that will enable the department and the public to obtain the required information from all CUPAs or the authorized officers or agencies, and (3) the statewide data base system is in place and fully operational.

SEC. 5. Section 25404 of the Health and Safety Code is amended to read:

25404. (a) For purposes of this chapter, the following terms shall have the following meaning:

(1) (A) "Certified Unified Program Agency" or "CUPA" means the agency certified by the secretary to implement the unified program specified in this chapter within a jurisdiction.

(B) "Participating Agency" or "PA" means an agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary, to implement or enforce one or more of the unified program elements specified in subdivision (c), in accordance with Sections 25404.1 and 25404.2.

(C) "Unified Program Agency" or "UPA" means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce a particular unified program element specified in subdivision (c). The UPAs have the responsibility and authority to implement and enforce the requirements listed in subdivision (c), and the regulations adopted to implement the requirements listed in subdivision (c), to the extent provided by Chapter 6.5 (commencing with Section 25100), Chapter 6.67 (commencing with Section 25270), Chapter 6.7 (commencing with Section 25280), Chapter 6.95 (commencing with Section 25500), and Sections 25404.1 and 25404.2. After a CUPA has been certified by the secretary, the unified program agencies shall be the only local agencies authorized to enforce the requirements listed in subdivision (c) within the jurisdiction of the CUPA.

(2) "Department" means the Department of Toxic Substances Control.

(3) "Secretary" means the Secretary for Environmental Protection.

(4) "Unified program facility" means all contiguous land and structures, other appurtenances, and improvements on the land that

are subject to the requirements listed in subdivision (c) of Section 25404.

(5) "Unified program facility permit" means a permit issued pursuant to this chapter. For the purposes of this chapter, a unified program facility permit encompasses the permitting requirements of Section 25284, and any permit or authorization requirements under any local ordinance or regulation relating to the generation or handling of hazardous waste or hazardous materials, but does not encompass the permitting requirements of a local ordinance that incorporates provisions of the Uniform Fire Code or the Uniform Building Code.

(b) The secretary shall adopt implementing regulations and implement a unified hazardous waste and hazardous materials management regulatory program, which shall be known as the unified program, after holding an appropriate number of public hearings throughout the state. The unified program shall be developed in close consultation with the director, the Director of the Office of Emergency Services, the State Fire Marshal, the executive officers and chairpersons of the State Water Resources Control Board and the California regional water quality control boards, the local health officers, local fire services, and other appropriate officers of interested local agencies, and affected businesses and interested members of the public, including environmental organizations.

(c) The unified program shall consolidate the administration of the following requirements, and shall, to the maximum extent feasible within statutory constraints, ensure the coordination and consistency of any regulations adopted pursuant to those requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, applicable to hazardous waste generators, and persons operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to Chapter 6.5 (commencing with Section 25100) or the regulations adopted by the department.

(B) The unified program shall not include the requirements of paragraph (3) of subdivision (c) of Section 25200.3, the requirements of Sections 25200.10 and 25200.14, and the authority to issue an order under Sections 25187 and 25187.1, with regard to those portions of a unified program facility that are subject to one of the following:

(i) A corrective action order issued by the department pursuant to Section 25187.

(ii) An order issued by the department pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iii) A remedial action plan approved pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iv) A cleanup and abatement order issued by a California regional water quality control board pursuant to Section 13304 of the Water Code, to the extent that the cleanup and abatement order addresses the requirements of the applicable section or sections listed in this subparagraph.

(v) Corrective action required under subsection (u) of Section 6924 of Title 42 of the United States Code or subsection (h) of Section 6928 of Title 42 of the United States Code.

(vi) An environmental assessment pursuant to Section 25200.14 or a corrective action pursuant to Section 25200.10 or paragraph (3) of subdivision (c) of Section 25200.3, that is being overseen by the department.

(C) The unified program shall not include the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, applicable to persons operating transportable treatment units, except that any required notice regarding transportable treatment units shall also be provided to the CUPAs.

(2) The requirement of subdivision (c) of Section 25270.5 for owners and operators of aboveground storage tanks to prepare a spill prevention control and countermeasure plan.

(3) The requirements of Chapter 6.7 (commencing with Section 25280) concerning underground storage tanks, except for the responsibilities assigned to the State Water Resources Control Board pursuant to Section 25297.1, and the requirements of any underground storage tank ordinance adopted by a city or county.

(4) The requirements of Article 1 (commencing with Section 25501) of Chapter 6.95 concerning hazardous material release response plans and inventories.

(5) The requirements of Article 2 (commencing with Section 25531) of Chapter 6.95, concerning the accidental release prevention program.

(6) The requirements of subdivisions (b) and (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9 of the Health and Safety Code, concerning hazardous material management plans and inventories.

(d) To the maximum extent feasible within statutory constraints, the secretary shall consolidate, coordinate, and make consistent these requirements of the unified program with other requirements imposed by other federal, state, regional, or local agencies upon facilities regulated by the unified program.

(e) The secretary shall establish standards to be used by CUPAs, participating agencies, state agencies, and businesses for the sharing of electronic data used within the programs listed in subdivision (c) of Section 25404. Those standards shall incorporate any standard developed under Section 25503.3.

SEC. 6. Section 25404.5 of the Health and Safety Code is amended to read:

25404.5. (a) (1) Each certified unified program agency shall institute a single fee system, which shall replace the fees levied pursuant to Section 25205.14, except for transportable treatment units permitted under Section 25200.2, and which shall also replace any fees levied by a local agency pursuant to Sections 25143.10, 25287, 25513, and 25535.2, or any other fee levied by a local agency specifically to fund the implementation of the provisions specified in subdivision (c) of Section 25404. Notwithstanding Sections 25143.10, 25205.14, 25287, 25513, and 25535.2, a person who complies with the certified unified program agency's "single fee system" fee shall not be required to pay any fee levied pursuant to those sections, except for transportable treatment units permitted under Section 25200.2.

(2) The governing body of the certified unified program agency shall establish the amount to be paid by each person regulated by the unified program under the single fee system at a level sufficient to pay the necessary and reasonable costs incurred by the certified unified program agency and by any participating agency pursuant to the requirements of subparagraph (E) of paragraph (1) of subdivision (d) of Section 25404.3.

(3) The fee system may also be designed to recover the necessary and reasonable costs incurred by the certified unified program agency, or a participating agency pursuant to the requirements of subparagraph (E) of paragraph (1) of subdivision (d) of Section 25404.3, in administering provisions other than those specified in subdivision (c) of Section 25404, if the implementation and enforcement of those provisions has been incorporated as part of the unified program by the certified unified program agency pursuant to subdivision (b) of Section 25404.2, and if the single fee system replaces any fees levied as of January 1, 1994, to fund the implementation of those additional provisions.

(4) The amount to be paid by a person regulated by the unified program may be adjusted to account for the differing costs of administering the unified program with respect to that person's regulated activities.

(b) Except as provided in subdivision (d), the single fee system instituted by each certified unified program agency shall include an assessment on each person regulated by the unified program of a surcharge, the amount of which shall be determined by the secretary annually, to cover the necessary and reasonable costs of state agencies in carrying out their responsibilities under this chapter. The secretary may adjust the amount of the surcharge to be collected by different certified unified program agencies to reflect the different costs incurred by the state in supervising the implementation of the unified program in different jurisdictions, and in supervising the implementation of the unified program in those jurisdictions for which the secretary has waived the assessment of the surcharge pursuant to subdivision (d). The certified unified program agency may itemize the amount of the surcharge on any bill, invoice, or

return that the agency sends to a person regulated by the unified program. Each certified unified program agency shall transmit all surcharge revenues collected to the secretary on a quarterly basis. The surcharge shall be deposited in the Unified Program Account, which is hereby created in the General Fund, and which may be expended, upon appropriation by the Legislature, by any state agency for the purposes of implementing this chapter.

(c) Each certified unified program agency and the secretary shall, before the institution of the single fee system and the assessment of the surcharge, implement a fee accountability program designed to encourage more efficient and cost-effective operation of the program for which the single fee and surcharge are assessed. The fee accountability programs shall include those elements of the requirements of the plan adopted pursuant to Section 25206 that the secretary determines are appropriate.

(d) The secretary may waive the requirement for a county to assess a surcharge pursuant to subdivision (b), if both of the following conditions apply:

(1) The county meets all of the following conditions:

(A) The county submits an application to the secretary for certification on or before January 1, 1996, that incorporates all of the requirements of this chapter, and includes the county's request for a waiver of the surcharge, and contains documentation that demonstrates, to the satisfaction of the secretary, both of the following:

(i) That the assessment of the surcharge will impose a significant economic burden on most businesses within the county.

(ii) That the combined dollar amount of the surcharge and the single fee system to be assessed by the county pursuant to subdivision (a) exceeds the combined dollar amount of all existing fees that are replaced by the single fee system for most businesses within the county.

(B) The application for certification, including the information required by subparagraph (A), is determined by the secretary to be complete, on or before April 30, 1996. The secretary, for good cause, may grant an extension of that deadline of up to 90 days.

(C) The county is certified by the secretary on or before December 31, 1996.

(D) On or before January 1, 1994, the county completed the consolidation of the administration of the hazardous waste generator program, the hazardous materials release response plans and inventories program, and the underground storage tank program, referenced in paragraphs (1), (3), and (4) of subdivision (c) of Section 25404, into a single program within the county's jurisdiction.

(E) The county demonstrates that it will consolidate the administration of all programs specified in subdivision (c) of Section 25404, and that it will also consolidate the administration of at least one additional program that regulates hazardous waste, hazardous

substances, or hazardous materials, as specified in subdivision (d) of Section 25404.2, other than the programs specified in subdivision (c) of Section 25404, into a single program to be administered by a single agency in the county's jurisdiction at the time that the county's certification by the secretary becomes effective.

(2) The secretary makes all of the following findings:

(A) The county meets all of the criteria specified in paragraph (1).

(B) The assessment of the surcharge would impose a significant economic burden on most businesses within the county.

(C) The combined dollar amount of the surcharge and the single fee system to be assessed by the county pursuant to subdivision (a) would exceed the combined dollar amount of all existing fees that are replaced by the single fee system for most businesses within the county.

(D) The waiver of the surcharge for those counties applying for and qualifying for a waiver, and the resulting increase in the surcharge for other counties, would not, when considered cumulatively, impose a significant economic burden on businesses in any other county that does not apply for, or does not meet the criteria for, a waiver of the surcharge.

(e) The secretary shall review all of the requests for a waiver of the surcharge made pursuant to subdivision (d) simultaneously, so as to adequately assess the cumulative impact of granting the requested waivers on businesses in those counties that have not applied, or do not qualify, for a waiver, and shall grant or deny all requests for a waiver of the surcharge within 30 days from the date that the secretary certifies all counties applying, and qualifying, for a waiver. If the secretary finds that the grant of a waiver of the surcharge for all counties applying and qualifying for the waiver will impose a significant economic burden on businesses in one or more other counties, the secretary shall take either of the following actions:

(1) Deny all of the applications for a waiver of the surcharge.

(2) Approve only a portion of the waiver requests for counties meeting the criteria set forth in subdivision (d), to the extent that the approved waivers, when taken as a whole, meet the condition specified in subparagraph (D) of paragraph (2) of subdivision (d). In determining which of the counties' waiver requests to grant, the secretary shall consider all of the following factors:

(A) The relative degree to which the assessment of the surcharge will impose a significant economic burden on most businesses within each county applying and qualifying for a waiver.

(B) The relative degree to which the combined dollar amount of the surcharge and the single fee system to be assessed, pursuant to subdivision (a), by each county applying and qualifying for a waiver exceeds the combined dollar amount of all existing fees that are replaced by the single fee system for most businesses within the county.

(C) The relative extent to which each county applying and qualifying for a waiver has incorporated, or will incorporate, upon certification, additional programs pursuant to subdivision (d) of Section 25404.2, into the unified program within the county's jurisdiction.

(f) The secretary may, at any time, terminate a county's waiver of the surcharge granted pursuant to subdivisions (d) and (e) if the secretary determines that the criteria specified in subdivision (d) for the grant of a waiver are no longer met.

CHAPTER 779

An act relating to coastal and ocean resources, and making an appropriation therefor.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. The sum of one million five hundred twenty thousand dollars ($1,520,000) is hereby appropriated from the General Fund, as follows:

(a) The sum of six hundred eighty-five thousand dollars ($685,000) to the California Coastal Commission, as follows:

(1) The sum of three hundred forty-five thousand dollars ($345,000) for the administration and support of the California Coastal Commission.

(2) The sum of three hundred forty thousand dollars ($340,000) for grants to local jurisdictions for the completion of local coastal programs, as defined in Section 30108.6 of the Public Resources Code. If local jurisdictions do not accept those funds to prepare local coastal programs, the California Coastal Commission may, with the approval of the Director of Finance, retain a portion of those funds to prepare local coastal programs for those local jurisdictions.

(b) The sum of four hundred twenty thousand dollars ($420,000) to the State Water Resources Control Board for purposes of preparing an inventory of existing water quality monitoring activities within state coastal watersheds, bays, estuaries, and coastal waters, and a report that proposes the implementation of a comprehensive program to monitor the quality of state coastal watersheds, bays, estuaries, and coastal waters.

(c) The sum of four hundred fifteen thousand dollars ($415,000) to the Resources Agency to purchase networking equipment for the

California Coastal Commission and to contract for services necessary to upgrade the California Coastal Commission's computer system.

CHAPTER 780

An act to add Section 19775.16 to the Government Code, and to add Section 395.08 to the Military and Veterans Code, relating to state employees, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. Section 19775.16 is added to the Government Code, to read:

19775.16. (a) In addition to the benefits provided pursuant to Sections 19775 and 19775.1, an employee who, as a member of the California National Guard or a United States military reserve organization, is called into active duty as a result of the Bosnia crisis on or after November 21, 1995, shall have the benefits provided for in subdivision (b).

(b) Any employee to which subdivision (a) applies, while on active duty, shall, with respect to active duty served on or after November 21, 1995, as a result of the Bosnia crisis, receive from the state, for a period not to exceed 180 calendar days, as part of his or her compensation both of the following:

(1) The difference between the amount of his or her military pay and allowances and the amount the employee would have received as a state employee as determined by the Department of Personnel Administration, including any merit raises that would otherwise have been granted during the time the individual was on active duty.

(2) All benefits that he or she would have received had he or she not been called to active duty unless the benefits are prohibited or limited by vendor contracts.

(c) Any individual receiving compensation pursuant to subdivision (b) who does not return to state service within 60 days of being released from active duty shall have that compensation treated as a loan payable with interest at the rate earned on the Pooled Money Investment Account. This subdivision shall not apply to compensation received pursuant to Section 19775.

(d) This section shall not apply to any active duty served voluntarily after the close of the Bosnia crisis.

(e) Benefits provided under paragraph (1) of subdivision (b) shall only be provided to an employee who was not eligible to participate in the federal Ready Reserve Mobilization Income Insurance

Program (10 U.S.C. Sec. 12521 et seq.) or a successor federal program that, in the determination of the Director of Personnel Administration, is substantively similar to the federal Ready Reserve Mobilization Income Insurance Program. For an employee eligible to participate in the federal Ready Reserve Mobilization Income Insurance Program or a successor program, and whose monthly salary as a state employee was higher than the sum of his or her military pay and allowances and the maximum allowable benefit under the federal Ready Reserve Mobilization Income Insurance Program or a successor program, the employee shall receive the amount payable under paragraph (1) of subdivision (b), but that amount shall be reduced by the maximum allowable benefit under the federal Ready Reserve Mobilization Income Insurance Program or a successor program. For individuals who elected the federal Ready Reserve Mobilization Income Insurance Program, the state shall reimburse for the cost of the insurance premium for the period of time on active duty, not to exceed 180 calendar days.

SEC. 2. Section 395.08 is added to the Military and Veterans Code, to read:

395.08. (a) In addition to the benefits provided pursuant to Sections 395.01 and 395.02, any officer or employee of the legislative, executive, or judicial department of the state, who, as a member of the California National Guard or a United States Military Reserve organization, is called into active duty as a result of the Bosnia crisis on or after November 21, 1995, shall have the benefits provided for in subdivision (b).

(b) Any officer or employee to which subdivision (a) applies, while on active duty, shall, with respect to active duty served on or after November 21, 1995, as a result of the Bosnia crisis, receive from the state, for a period not to exceed 180 calendar days, as part of his or her compensation, both of the following:

(1) The difference between the amount of his or her military pay and allowances and the amount the officer or employee would have received as a state officer or employee, including any merit raises that would otherwise have been granted during the time the individual was on active duty.

(2) All benefits that he or she would have received had he or she not been called to active duty unless the benefits are prohibited or limited by vendor contracts.

(c) Any individual receiving compensation pursuant to subdivision (b) who does not return to state service within 60 days of being released from active duty shall have that compensation treated as a loan payable with interest at the rate earned on the Pooled Money Investment Account. This subdivision shall not apply to compensation received pursuant to Section 395.02.

(d) This section shall not apply to any active duty served voluntarily after the close of the Bosnia crisis.

(e) Benefits provided under paragraph (1) of subdivision (b) shall only be provided to an employee who was not eligible to participate in the federal Ready Reserve Mobilization Income Insurance Program (10 U.S.C. Sec. 12521 et seq.) or a successor federal program that, in the determination of the Director of Personnel Administration, is substantively similar to the federal Ready Reserve Mobilization Income Insurance Program. For an employee eligible to participate in the federal Ready Reserve Mobilization Income Insurance Program or a successor program, and whose monthly salary as a state employee was higher than the sum of his or her military pay and allowances and the maximum allowable benefit under the federal Ready Reserve Mobilization Income Insurance Program or a successor program, the employee shall receive the amount payable under paragraph (1) of subdivision (b), but that amount shall be reduced by the maximum allowable benefit under the federal Ready Reserve Mobilization Income Insurance Program or a successor program. For individuals who elected the federal Ready Reserve Mobilization Income Insurance Program the state shall reimburse for the cost of the insurance premium for the period of time on active duty, not to exceed 180 calendar days.

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

In order that the changes proposed by this act affecting certain state employees may become effective at the earliest possible time, it is necessary for this act to take effect immediately.

CHAPTER 781

An act to add Section 13177 to the Water Code, relating to the California Mussel Watch Program, and making an appropriation therefor.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. Section 13177 is added to the Water Code, to read:

13177. (a) It is the intent of the Legislature that the state board continue to implement the California State Mussel Watch Program.

(b) The Legislature finds and declares that the California State Mussel Watch Program provides the following benefits to the people of the state:

(1) An effective method for monitoring the long-term effects of certain toxic substances in selected fresh, estuarine, and marine waters.

(2) An important element in the state board's comprehensive water quality monitoring strategy.

(3) Identification, on an annual basis of specific areas where concentrations of toxic substances are higher than normal.

(4) Valuable information to guide the state and regional boards and other public and private agencies in efforts to protect water quality.

(c) To the extent funding is appropriated for this purpose, the state board, in conjunction with the Department of Fish and Game, shall continue to implement the long-term coastal monitoring program known as the California State Mussel Watch Program. The program may consist of, but is not limited to, the following elements:

(1) Removal of mussels, clams, and other aquatic organisms from relatively clean coastal sites and placing them in sampling sites. For purposes of this section, "sampling sites" means selected waters of concern to the state board and the Department of Fish and Game.

(2) After specified exposure periods at the sampling sites, removal of the aquatic organisms for analysis.

(3) Laboratory analysis of the removed aquatic organisms to determine the amounts of various toxic substances that may have accumulated in the bodies of the aquatic organisms.

(4) Making available both the short- and long-term results of the laboratory analysis to appropriate public and private agencies and the public.

SEC. 2. The sum of one hundred forty-five thousand dollars ($145,000) is hereby appropriated from the General Fund to the State Water Resources Control Board to pay the costs of the California State Mussel Watch Program pursuant to Section 13177 of the Water Code.

CHAPTER 782

An act to amend Section 30620 of the Public Resources Code, relating to coastal resources.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. Section 30620 of the Public Resources Code is amended to read:

30620. (a) By January 30, 1977, the commission shall, consistent with this chapter, prepare interim procedures for the submission,

review, and appeal of coastal development permit applications and of claims of exemption. These procedures shall include, but are not limited to, the following:

(1) Application and appeal forms.

(2) Reasonable provisions for notification to the commission and other interested persons of any action taken by a local government pursuant to this chapter, in sufficient detail to ensure that a preliminary review of that action for conformity with this chapter can be made.

(3) Interpretive guidelines designed to assist local governments, the commission, and persons subject to this chapter in determining how the policies of this division shall be applied in the coastal zone prior to the certification of local coastal programs. However, the guidelines shall not supersede, enlarge, or diminish the powers or authority of the commission or any other public agency.

(b) Not later than May 1, 1977, the commission shall, after public hearing, adopt permanent procedures that include the components specified in subdivision (a) and shall transmit a copy of those procedures to each local government within the coastal zone and make them readily available to the public. The commission may thereafter, from time to time, and, except in cases of emergency, after public hearing, modify or adopt additional procedures or guidelines that the commission determines to be necessary to better carry out this division.

(c) (1) The commission may require a reasonable filing fee and the reimbursement of expenses for the processing by the commission of any application for a coastal development permit under this division and, except for local coastal program submittals, for any other filing, including, but not limited to, a request for revocation, categorical exclusion, or boundary adjustment, submitted for review by the commission.

(2) Any coastal development permit fees collected by the commission under paragraph (1) shall be deposited in the Coastal Access Account, which is hereby created in the State Coastal Conservancy Fund. The money in the account shall be available, upon appropriation by the Legislature in the annual Budget Act, to the State Coastal Conservancy for grants to public agencies and private nonprofit entities or organizations for the development, maintenance, and operation of new or existing facilities that provide public access to the shoreline of the sea, as defined in Section 30115. Any grant funds that are not expended for those purposes shall revert to the account. Nothing in this paragraph authorizes an increase in fees or creates any new authority on the part of the commission.

(d) With respect to any appeal of an action taken by a local government pursuant to Section 30602 or 30603, the executive director shall, within five working days of receipt of an appeal from any person other than members of the commission or any public agency, determine whether the appeal is patently frivolous. If the

executive director determines that an appeal is patently frivolous, the appeal shall not be filed unless a filing fee in the amount of three hundred dollars ($300) is deposited with the commission within five working days of the receipt of the executive director's determination. If the commission subsequently finds that the appeal raises a substantial issue, the filing fee shall be refunded.

CHAPTER 783

An act to amend Section 13271 of the Water Code, relating to water.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. Section 13271 of the Water Code is amended to read:

13271. (a) (1) Except as provided by subdivision (b), any person who, without regard to intent or negligence, causes or permits any hazardous substance or sewage to be discharged in or on any waters of the state, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the state, shall, as soon as (1) that person has knowledge of the discharge, (2) notification is possible, and (3) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the Office of Emergency Services of the discharge in accordance with the spill reporting provision of the state toxic disaster contingency plan adopted pursuant to Article 3.7 (commencing with Section 8574.16) of Chapter 7 of Division 1 of Title 2 of the Government Code.

(2) The Office of Emergency Services shall immediately notify the appropriate regional board and the local health officer and administrator of environmental health of the discharge. The regional board shall notify the state board as appropriate.

(3) Upon receiving notification of a discharge pursuant to paragraph (2), the local health officer and administrator of environmental health shall immediately determine whether notification of the public is required to safeguard public health and safety. If so, the local health officer and administrator of environmental health shall immediately notify the public of the discharge by posting notices or other appropriate means. The notification shall describe measures to be taken by the public to protect the public health.

(b) The notification required by this section shall not apply to a discharge in compliance with waste discharge requirements or other provisions of this division.

(c) Any person who fails to provide the notice required by this section is guilty of a misdemeanor and shall be punished by a fine of not more than twenty thousand dollars ($20,000) or imprisonment for not more than one year, or both. Except where a discharge to the waters of this state would have occurred but for cleanup or emergency response by a public agency, this subdivision shall not apply to any discharge to land which does not result in a discharge to the waters of this state.

(d) Notification received pursuant to this section or information obtained by use of that notification shall not be used against any person providing the notification in any criminal case, except in a prosecution for perjury or giving a false statement.

(e) For substances listed as hazardous wastes or hazardous material pursuant to Section 25140 of the Health and Safety Code, the state board, in consultation with the Department of Toxic Substances Control, shall by regulation establish reportable quantities for purposes of this section. The regulations shall be based on what quantities should be reported because they may pose a risk to public health or the environment if discharged to ground or surface water. Regulations need not set reportable quantities on all listed substances at the same time. Regulations establishing reportable quantities shall not supersede waste discharge requirements or water quality objectives adopted pursuant to this division, and shall not supersede or affect in any way the list, criteria, and guidelines for the identification of hazardous wastes and extremely hazardous wastes adopted by the Department of Toxic Substances Control pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code. The regulations of the Environmental Protection Agency for reportable quantities of hazardous substances for purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.) shall be in effect for purposes of the enforcement of this section until the time that the regulations required by this subdivision are adopted.

(f) The state board shall adopt regulations establishing reportable quantities of sewage for purposes of this section. The regulations shall be based on the quantities that should be reported because they may pose a risk to public health or the environment if discharged to ground or surface water. Regulations establishing reportable quantities shall not supersede waste discharge requirements or water quality objectives adopted pursuant to this division. For purposes of this section, "sewage" means the effluent of a municipal wastewater treatment plant or a private utility wastewater treatment plant, as those terms are defined in Section 13625.

(g) Except as otherwise provided in this section and Section 8589.7 of the Government Code, a notification made pursuant to this section shall satisfy any immediate notification requirement contained in any permit issued by a permitting agency. When notifying the Office of

Emergency Services, the person shall include all of the notification information required in the permit.

SEC. 1.5. Section 13271 of the Water Code is amended to read:

13271. (a) (1) Except as provided by subdivision (b), any person who, without regard to intent or negligence, causes or permits any hazardous substance or sewage to be discharged in or on any waters of the state, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the state, shall, as soon as (1) that person has knowledge of the discharge, (2) notification is possible, and (3) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the Office of Emergency Services of the discharge in accordance with the spill reporting provision of the state toxic disaster contingency plan adopted pursuant to Article 3.7 (commencing with Section 8574.16) of Chapter 7 of Division 1 of Title 2 of the Government Code.

(2) The Office of Emergency Services shall immediately notify the appropriate regional board and the local health officer and administrator of environmental health of the discharge. The regional board shall notify the state board as appropriate.

(3) Upon receiving notification of a discharge pursuant to paragraph (2), the local health officer and administrator of environmental health shall immediately determine whether notification of the public is required to safeguard public health and safety. If so, the local health officer and administrator of environmental health shall immediately notify the public of the discharge by posting notices or other appropriate means. The notification shall describe measures to be taken by the public to protect the public health.

(b) The notification required by this section shall not apply to a discharge in compliance with waste discharge requirements or other provisions of this division.

(c) Any person who fails to provide the notice required by this section is guilty of a misdemeanor and shall be punished by a fine of not more than twenty thousand dollars ($20,000) or imprisonment for not more than one year, or both. Except where a discharge to the waters of this state would have occurred but for cleanup or emergency response by a public agency, this subdivision shall not apply to any discharge to land which does not result in a discharge to the waters of this state.

(d) Notification received pursuant to this section or information obtained by use of that notification shall not be used against any person providing the notification in any criminal case, except in a prosecution for perjury or giving a false statement.

(e) For substances listed as hazardous wastes or hazardous material pursuant to Section 25140 of the Health and Safety Code, the state board, in consultation with the Department of Toxic Substances Control, shall by regulation establish reportable quantities for

purposes of this section. The regulations shall be based on what quantities should be reported because they may pose a risk to public health or the environment if discharged to ground or surface water. Regulations need not set reportable quantities on all listed substances at the same time. Regulations establishing reportable quantities shall not supersede waste discharge requirements or water quality objectives adopted pursuant to this division, and shall not supersede or affect in any way the list, criteria, and guidelines for the identification of hazardous wastes and extremely hazardous wastes adopted by the Department of Toxic Substances Control pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code. The regulations of the Environmental Protection Agency for reportable quantities of hazardous substances for purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.) shall be in effect for purposes of the enforcement of this section until the time that the regulations required by this subdivision are adopted.

(f) The state board shall adopt regulations establishing reportable quantities of sewage for purposes of this section. The regulations shall be based on the quantities that should be reported because they may pose a risk to public health or the environment if discharged to ground or surface water. Regulations establishing reportable quantities shall not supersede waste discharge requirements or water quality objectives adopted pursuant to this division. For purposes of this section, "sewage" means the effluent of a municipal wastewater treatment plant or a private utility wastewater treatment plant, as those terms are defined in Section 13625, except that sewage does not include recycled water, as defined in subdivisions (c) and (d) of Section 13529.2.

(g) Except as otherwise provided in this section and Section 8589.7 of the Government Code, a notification made pursuant to this section shall satisfy any immediate notification requirement contained in any permit issued by a permitting agency. When notifying the Office of Emergency Services, the person shall include all of the notification information required in the permit.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 13271 of the Water Code proposed by both this bill and AB 541. 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 13271 of the Water Code, and (3) this bill is enacted after AB 541, in which case Section 1 of this bill shall not become operative.

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 784

An act to amend Section 14850 of the Government Code, to amend Sections 2 and 3 of Chapter 352 of the Statutes of 1976, to amend Section 4 of Chapter 620 of the Statutes of 1989, to amend Section 2 of Chapter 625 of the Statutes of 1991, and to amend Section 1 of Chapter 317 of the Statutes of 1993, relating to state administration.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. Section 14850 of the Government Code is amended to read:

14850. All state printing shall be done in the Office of State Printing.

State work only shall be done in the Office of State Printing. The Office of State Printing may also be known as the Office of State Publishing.

SEC. 2. The Director of General Services, with the approval of the State Public Works Board, may sell, exchange, lease, or transfer for current market value or for any lesser consideration authorized by law and upon those terms and conditions and subject to those reservations and exceptions as the Director of General Services determines are in the best interest of the state, all or any part of the following real property:

Parcel 1. Approximately 1.37 acres, with structures used as offices by the State Department of Health Services, located at 5545 East Shields Avenue, Fresno, Fresno County.

Parcel 2. Approximately 1.11 acres, with a structure used as a laboratory and office space by the State Department of Health Services, located at 1449 West Temple Street, Los Angeles, Los Angeles County.

Parcel 3. Approximately 6.4 acres of vacant land, being a portion of Agnews Developmental Center, West Campus, located at the northeast corner of Montague Expressway and Lick Mill Boulevard, Santa Clara County.

Parcel 4. Approximately 21 acres of vacant land, being a portion of the Agnews Developmental Center, West Campus, located on the east side of Lick Mill Boulevard, Santa Clara County.

Parcel 5. Approximately 0.76 acre of vacant land identified as Lot 15, Havenhurst Drive, Encino, Los Angeles County.

SEC. 3. (a) Notices of every public sale shall be posted on the property to be sold under this act and shall be published in a newspaper of general circulation published in the county in which the real property to be sold is situated.

(b) Any sale, exchange, lease, or transfer of the parcels described in this act is exempt from Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.

SEC. 4. (a) The Department of General Services shall be reimbursed for any cost or expense incurred in the disposition of any parcels.

(b) The net proceeds of any moneys received from the disposition of any parcels described in this act shall be deposited in the General Fund and be available for appropriation in accordance with Section 15863 of the Government Code, except as follows:

(1) The net proceeds derived from the sale or exchange of Parcels 1 to 6, inclusive, of Section 12 of this act shall be deposited in the State Parks and Recreation Fund.

SEC. 5. As to any property sold pursuant to this act consisting of 15 acres or less, the Director of General Services shall except and reserve to the state all mineral deposits, as described in Section 6407 of the Public Resources Code, below a depth of 500 feet, without surface rights of entry. As to property sold pursuant to this act consisting of more than 15 acres, the Director of General Services shall except and reserve to the state all mineral deposits, as described in Section 6407 of the Public Resources Code, together with the right to prospect for, mine, and remove the deposits. The rights to prospect for, mine, and remove the deposits shall be limited to those areas of the property conveyed that the director, after consultation with the State Lands Commission, determines to be reasonably necessary for the removal of the deposits.

SEC. 6. Section 2 of Chapter 352 of the Statutes of 1976 is amended to read:

Sec. 2. The Governor may, whenever he or she determines it to be in the best interests of the state, direct the Department of General Services to transfer to the United States National Park Service the following properties for inclusion within the Golden Gate National Recreation Area pursuant to Public Law 92-589 (86 Stat. 1299) or for inclusion in the San Francisco Maritime National Historic Park pursuant to Public Law 100-348 (102 Stat. 654):

(a) San Francisco Maritime State Historical Park, including vessels and the Haslett Warehouse, which may be leased with the proceeds from the lease or leases credited toward the maintenance,

repair, and related expenses of the historic vessels of San Francisco Maritime National Historic Park.

SEC. 7. Section 3 of Chapter 352 of the Statutes of 1976 is amended to read:

Sec. 3. (a) Prior to any transfer pursuant to Section 1 of this act the state shall maintain all such properties in their current physical condition.

(b) No new lease, concession, or other agreement between the state and any person shall be entered into pertaining to properties under Section 1 of this act unless it is made subject to termination upon transfer of the affected property to the United States or its approved by the appropriate agency of the United States.

(c) Any lease, concession, or other agreement not included in subdivision (b) may be transferred to the National Park Service.

(d) Every instrument of transfer pursuant to this act shall provide that any land transferred shall be reconveyed only to the state and, except for the Haslett Warehouse, shall provide that any land not used for a purpose consistent with the purposes of the Golden Gate National Recreation Area, as specified in Public Law 92-589 (86 Stat. 1299), as amended, or with the purposes of the San Francisco Maritime National Historic Park, as specified in Public Law 100-348 (102 Stat. 654), as amended, shall revert to the state.

(e) There shall be reserved to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, together with the right to prospect for, mine, and remove such deposits, but such right shall be limited to those areas of the property transferred which the Director of General Services determines to be reasonably necessary for the removal of such deposits.

SEC. 8. Section 4 of Chapter 620 of the Statutes of 1989, as amended by Section 7 of Chapter 417 of the Statutes of 1996, is amended to read:

Sec. 4. The Director of General Services, with the approval of the State Public Works Board, may sell, exchange, or lease for current market value or for any lesser consideration authorized by law and upon such terms and conditions and subject to such reservations and exceptions as the Director of General Services determines are in the best interests of the state, all or any part of the following real property:

Parcel 2. Approximately 0.4 acre with a structure, known as the Paskenta Residence of the Department of Forestry and Fire Protection and fronting on Toomes Camp Road near its intersection with Mountain View Road in Tehama County.

Parcel 3. Approximately 2.68 acres in two parcels known as Rio Vista North Fishing Access No. 1 of the Department of Fish and Game and lying between State Highway Route 84 and the Sacramento River downstream of its confluence with Cache Slough and Steamboat Slough in Solano County.

Parcel 4. Approximately 1.0 acre known as Rio Vista North Fishing Access No. 2 of the Department of Fish and Game and fronting on the west side of State Highway Route 84 and the Sacramento River downstream of its confluence with Cache Slough and Steamboat Slough in Solano County.

Parcel 5. Approximately 2.22 acres, consisting of part of the Los Ranchos Wildlife Area of the Department of Fish and Game fronting on the eastern right-of-way of State Highway Route 227 near its intersection with the right-of-way of the Southern Pacific Transportation Company in San Luis Obispo County near the unincorporated community of Edna.

Parcel 6. Approximately 0.86 acre with a structure utilized as office space by the Department of Motor Vehicles and known as 379 Colusa Avenue, Yuba City.

Parcel 9. Approximately 0.13 acre, consisting of an unimproved, subdivided lot fronting on Palisades Beach Road immediately adjacent to Santa Monica State Beach.

Parcel 10. Approximately 0.12 acre, consisting of an unimproved, subdivided lot fronting on Palisades Beach Road immediately adjacent to Santa Monica State Beach.

Parcel 11. Approximately 0.23 acre, consisting of an unimproved, subdivided lot fronting on Palisades Beach Road immediately adjacent to Santa Monica State Beach.

SEC. 9. Section 2 of Chapter 625 of the Statutes of 1991 is amended to read:

Sec. 2. The Director of General Services, with the approval of the State Public Works Board, may sell, exchange, or lease for current market value or for any lesser consideration authorized by law and upon those terms and conditions and subject to those reservations and exceptions as the Director of General Services determines are in the best interest of the state, all or any part of the following real property:

Parcel 1. Approximately 0.95 acre, with a structure used as a field office by the California Highway Patrol at 25111 The Old Road, Newhall, Los Angeles County.

Parcel 2. Approximately 0.92 acre, with a structure used as a field office by the California Highway Patrol at 60 North Highland Springs Avenue, Banning, Riverside County.

Parcel 3. Approximately 3.13 acres, with a structure used as a field office by the California Highway Patrol at 1382 West Olive Avenue, Fresno, Fresno County.

Parcel 4. Approximately 1.08 acres, with a structure used as a field office by the California Highway Patrol at 11050 13th Avenue, Hanford, Kings County.

Parcel 5. Approximately 0.95 acre, with a structure used as a field office by the California Highway Patrol at 79-500 Varner Road, Indio, Riverside County.

Parcel 6. Approximately 1.92 acres, with a structure used as a field office by the California Highway Patrol at 1800 East Childs Avenue, Merced, Merced County.

Parcel 7. Approximately 0.73 acre, with a structure used as a field office by the California Highway Patrol at Navahoe Road at Highway 50, Meyers, South Lake Tahoe, El Dorado County.

Parcel 9. Approximately 1.43 acres, with a structure used as a field office by the California Highway Patrol at 2031 East Santa Clara Avenue, Santa Ana, Orange County.

Parcel 10. Approximately 0.94 acre, with a structure used as a field office by the California Highway Patrol at 19055 Portola Drive, Salinas, Monterey County.

Parcel 12. Approximately 1.1 acres, with a structure used by the Department of Motor Vehicles, located at 222 Harding Boulevard, Roseville, Placer County.

Parcel 13. Approximately 1.3 acres, with a structure used by the Department of Motor Vehicles, located at 615 Locust Street, Redding, Shasta County.

SEC. 10. Section 1 of Chapter 317 of the Statutes of 1993 is amended to read:

Section 1. The Director of General Services, with the approval of the State Public Works Board, may sell, exchange, or lease for current market value or for any lesser consideration authorized by law and upon those terms and conditions and subject to those reservations and exceptions as the Director of General Services determines are in the best interest of the state, all or any part of the following real property:

Parcel 1. Approximately 0.75 acre, with a structure used as a field office by the California Highway Patrol, at 1444 Parkway Drive, Crescent City, Del Norte County.

Parcel 3. Approximately 0.96 acre, with a structure used by the Employment Development Department, at 233 E. Commonwealth Avenue, Fullerton, Orange County.

Parcel 4. Approximately 10.01 acres, with improvements thereon, used by the California State University at Stanislaus, at 3500 Geer Road, Turlock, Stanislaus County.

Parcel 5. Approximately 1.68 acres of land, formerly the site of a field office of the Department of Motor Vehicles that was destroyed by fire in April of 1992, located at 2627 Pacific Avenue, Long Beach, Los Angeles County.

SEC. 11. The authorization to sell, exchange, or lease the following properties is rescinded by Sections 8, 9, and 10 of this act, as the concerned state agencies have reported that the following properties are no longer considered surplus:

(a) Parcel 8 of Section 2 of Chapter 625 of the Statutes of 1991.

(b) Parcel 11 of Section 2 of Chapter 625 of the Statutes of 1991.

(c) Parcel 2 of Section 1 of Chapter 317 of the Statutes of 1993.

(d) Parcel 7 of Section 4 of Chapter 620 of the Statutes of 1989, as amended by Section 7 of Chapter 417 of the Statutes of 1996.

SEC. 12. The Director of Parks and Recreation, with the approval of the State Public Works Board and the Director of General Services, may sell or exchange for current market value, upon those terms and conditions and subject to those reservations and exceptions that may be in the best interest of the state, all or part of the following property:

Parcel 1. Approximately 0.32 acre of land at Carpinteria State Beach within the community of Mussell Shoals in Ventura County.

Parcel 2. Approximately 1,600 square feet of land located at the Skylandia Park portion of the Tahoe State Recreation Area near Tahoe City, Placer County.

Parcel 3. Approximately 1,800 square feet of land located north of Mackinaw Road at the William B. Layton Park portion of the Tahoe State Recreation Area in Tahoe City, Placer County.

Parcel 4. Approximately 1,900 square feet of land located at Morro Strand State Beach near Cayucos, in San Luis Obispo County.

Parcel 5. Approximately 1 acre of land at Sinkyone Wilderness State Park, near Shelter Cove, Mendocino County.

Parcel 6. Approximately 2.5 acres of open-space easement at the Bishop Peak portion of Morro Bay State Park, near the City of San Luis Obispo, San Luis Obispo County.

CHAPTER 785

An act to add and repeal Article 9.7 (commencing with Section 8420) of Chapter 2 of Part 3 of Division 6 of, and to repeal Section 8425 of, the Fish and Game Code, relating to commercial fishing, and making an appropriation therefor.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. Article 9.7 (commencing with Section 8420) is added to Chapter 2 of Part 3 of Division 6 of the Fish and Game Code, to read:

Article 9.7. Market Squid

8420. The Legislature finds and declares that the fishery for market squid (Loligo opalescens) is the state's largest fishery by volume, generating millions of dollars of income to the state annually from domestic and foreign sales. In addition to supporting an important commercial fishery, the market squid resource is important to the recreational fishery and is forage for other fish taken

for commercial and recreational purposes. The growing international market for squid and declining squid production from other parts of the world has resulted in an increased demand for California market squid, which, in turn, has led to newer, larger, and more efficient vessels entering the fishery and increased processing capacity. The Legislature finds that the lack of research on market squid and the lack of annual at-sea surveys to determine the status of the resource, combined with the increased demand for, and fishing effort on, market squid could result in overfishing of the resource, damaging the resource, and financially harming those persons engaged in the taking, landing, processing, and sale of market squid. The Legislature further finds that many individuals, vessels, and processing plants engaged in the market squid fishery have no other viable alternative fisheries available to them and that a decline or a loss of the market squid resource would cause economic devastation to the individuals or corporations engaged in the market squid fishery. The Legislature declares that to prevent excessive fishing effort in the market squid fishery and to develop a plan for the sustainable harvest of market squid, it is necessary to limit the number of days of the week market squid may be taken and to develop a plan for a sustainable California market squid fishery.

8420.5. North of a line extending due west magnetic from Point Conception, market squid may be taken for commercial purposes only between noon on Sunday and noon on Friday of each week.

8421. (a) On or after April 1, 1998, no person shall use a vessel to take or land market squid with dip nets (commonly referred to as scoop nets), purse seine nets, or lampara nets for commercial purposes unless the owner of that vessel has been issued a commercial market squid vessel permit by the department that has not been suspended or revoked.

(b) A commercial market squid vessel permit shall be issued only for vessels employing dip, purse seine, or lampara nets for the taking of market squid for commercial purposes. No permit is required for any vessel taking or landing market squid for commercial purposes if the amount taken by the vessel does not exceed two tons landed in a calendar day or if the squid taken is used for live bait only. No other nets shall be used for the taking of market squid from a vessel for commercial purposes. Furthermore, it is unlawful to possess in excess of two tons of incidentally taken squid per trip.

(c) A commercial market squid vessel permit shall be issued to a person only if that person is the owner of record of the commercial fishing vessel for which the permit is issued and the vessel is registered with the department pursuant to Section 7881.

(d) A commercial market squid vessel permit shall be issued only to the person who owns the vessel at the time of application for that permit. For purposes of this subdivision, an owner includes any person who has a lease-purchase agreement for the purchase of a vessel.

(e) No person who is issued a commercial market squid vessel permit shall sell, trade, or transfer the permit to another person.

(f) A commercial market squid vessel permit shall be issued annually, commencing with the permit for the 1998–99 permit year.

(g) A violation of this section does not constitute a misdemeanor; however, pursuant to Section 7857, the commission may revoke or suspend the commercial market squid vessel permit or commercial fishing license held by any person who violates this section.

(h) Squid landed in excess of the limit specified in subdivision (b) of Section 8421 without a permit shall be forfeited to the department by the signing of an official release of property form. The squid shall be sold or disposed of in a manner to be determined by the department. The proceeds from all sales shall be paid into the Fish and Game Preservation Fund.

8421.5. If a commercial market squid vessel permit is issued for a vessel that is owned by a bona fide partnership or corporation, that partnership or corporation shall designate the individual who is the operator and shall provide that information to the department annually at the time of issuing the permit. If there is a dissolution of the partnership or the corporation, the partnership or corporation shall notify the department of the name of the partner or shareholder who is the successor permitholder and the department shall reissue the permit to that partner or shareholder.

8422. (a) Notwithstanding subdivision (d) of Section 1050, the department shall establish the fee for a commercial market squid vessel permit in an amount not to exceed the reasonable costs incurred by the department in administering this article, including any necessary biological assessments of the market squid resource, or two thousand five hundred dollars ($2,500), whichever is less. On and after January 1, 1999, the department may reduce the permit renewal fee if it determines that sufficient revenues exist from both private and public sources to cover the cost incurred by the department in administering this article.

(b) All applications for a commercial market squid vessel permit for the 1998–99 permit year shall be received by the department on or before April 30, 1998, or, if mailed, shall be postmarked by April 30, 1998. In order to renew a permit, an applicant shall have been issued a commercial market squid vessel permit in the immediately preceding year. Applications for renewal of the permit shall be received by the department on or before April 30 of each year, or, if mailed, shall be postmarked by April 30 of each year.

(c) Notwithstanding Section 7852.2, a penalty of two hundred fifty dollars ($250) shall be paid in addition to the fee required under subdivision (a) for applications that do not meet the deadline specified in subdivision (b) but that are received by the department on or before May 31 of any year.

(d) The department shall deny all applications received after May 31 of each year, and the application shall be returned to the applicant

who may appeal the denial to the commission. If the commission issues a permit following an appeal, it shall assess the late penalty prescribed by subdivision (c).

8423. (a) No person shall operate a squid light boat unless the owner of the boat has been issued a commercial squid light boat owner's permit by the department and a permit number is affixed to the boat in the manner prescribed by the department.

(b) The department shall issue a commercial squid light boat owner's permit to a person who submits an application, pays the permit fee, and meets the other requirements of this section.

(c) The department may regulate the use of squid light boats consistent with the regulations established for commercial squid vessels.

(d) Notwithstanding subdivision (d) of Section 1050, the department shall establish the fee for a commercial squid light boat owner's permit in an amount not to exceed the reasonable costs incurred by the department in administering this article, including any necessary regulations controlling the use of squid light boats, or two thousand five hundred dollars ($2,500), whichever is less. On and after January 1, 1999, the department may reduce the renewal permit fee if it determines that sufficient revenues exist from both private and public sources to cover costs incurred by the department in administering this article.

(e) It is unlawful for a person to engage in the following activities, unless the vessel used for the activity has been issued a commercial market squid vessel permit or the person holds a commercial squid light boat owner's permit:

(1) Attracting squid by light displayed from a vessel, except from a vessel deploying nets for the take, possession, and landing of squid or except from the seine skiff of the vessel deploying nets for the take, possession, and landing of squid.

(2) Attracting squid by light displayed from a vessel whose primary purpose is other than the deployment, or assistance in the deployment, of nets for the take, possession, and landing of squid.

(f) A commercial squid light boat owner's permit shall be issued to a person who is the owner of record of a vessel that is registered with the department pursuant to Section 7881. For purposes of this subdivision, an owner includes any person who has a lease-purchase agreement for the purchase of a vessel.

8423.5. (a) All applications for a commercial squid light boat owner's permit for the 1998 permit year shall be received by the department on or before April 30, 1998, or, if mailed, shall be postmarked by April 30, 1998. In order to renew a permit, an applicant shall have been issued a commercial squid light boat owner's permit in the immediately preceding year. Applications for renewal of the permit shall be received by the department on or before April 30 of each year, or, if mailed, shall be postmarked by April 30 of each year.

(b) Notwithstanding Section 7852.2, a penalty of two hundred fifty dollars ($250) shall be paid in addition to the fee required under subdivision (a) for applications that do not meet the deadline specified in subdivision (b) but that are received by the department on or before May 31 of any year.

(c) The department shall deny all applications received after May 31 of each year, and the application shall be returned to the applicant who may appeal the denial to the commission. If the commission issues a license following an appeal, it shall assess the late penalty prescribed by subdivision (b).

8424. (a) No person shall purchase squid from a vessel or vessels unless that person holds a license issued pursuant to Section 8032 or 8033, employs a certified weighmaster, and the facilities operated by the person are located on a permanent, fixed location.

(b) Notwithstanding any other provision of law, this section shall not apply to the transfer at sea of squid for live bait in an amount less than 200 pounds in a calendar day.

8425. On or after April 1, 1998, and annually thereafter, the commission, upon the recommendation of the director, after a public hearing at which findings are adopted, shall adopt regulations to protect the squid resource and manage the squid fishery at a sustainable level, taking into account the level of fishing effort and ecological factors, including but not limited to, the species' role in the marine ecosystem and oceanic conditions.

8426. (a) The director shall be responsible for the development of research protocols and the development of recommendations for the management of the squid fishery as set forth in subdivision (c) and for the conduct of public hearings to receive information on the resource and the fishery. The director may establish a Squid Research Scientific Committee consisting of persons with scientific knowledge or expertise on the squid resource or fishery, who may be employed by academic institutions, public or private research institutions, or the private sector. The committee, if established, shall assist in the development of research protocols and the preparation and review of the market squid conservation and management plan as described in subdivision (c). The department shall pay, from revenues derived pursuant to this article, the necessary costs of the committee, including a per diem to all members, as determined by the department.

(b) The director may establish a Squid Fishery Advisory Committee consisting of members representing licensed squid fishermen, squid processors, the recreational fishing industry, squid light boat owners, marine conservation organizations, and the Sea Grant Marine Advisory Program.

(c) The director shall hold public hearings to take testimony on interim measures, squid research needs, and the development of the management recommendations to be included in the report to the Legislature. Notwithstanding Section 7550.5 of the Government

Code, on or before April 1, 2001, in consultation with the Squid Fishery Advisory Committee, if established, and following public hearings, the director shall submit to the Legislature a report on the status of the market squid fishery with recommendations for a market squid conservation and management plan, including, but not limited to, the following information:

(1) Whether a limited access plan to manage the amount of fishing effort in the market squid fishery is necessary and, if so, what criteria should be used to determine who may participate in the fishery, what the optimum number of vessels should be in the fishery, and the overall fleet capacity.

(2) Whether it is necessary or advisable to reduce the number of days of the week that market squid may be taken for commercial purposes in specified areas of the state to protect the squid resource.

(3) Whether there are areas, if any, that should be declared harvest replenishment areas for squid where the taking of squid would not be permitted.

(4) A research and monitoring program of the market squid resource as may be needed to assist in the management of the market squid fishery to assure sustainable harvests on an annual basis and funding for that program.

(5) The regulation of squid light boats.

(6) Coordination that may be necessary with a federal coastal pelagic species management plan, should one be adopted.

(7) Whether it is necessary or advisable to modify the method of take or the use of fishing gear.

8427. (a) A commercial market squid vessel permit issued pursuant to Section 8422 or a commercial squid light boat owner's permit issued pursuant to Section 8423 may be transferred to another vessel owned by the permitholder, if the vessel is of comparable capacity as determined by United States Coast Guard documentation papers, and only if the permitted vessel was lost, stolen, destroyed, or suffered a major mechanical breakdown.

(b) The department shall not issue a permit for a replacement vessel if the permitted vessel was reported as lost, stolen, destroyed, or damaged for fraudulent purposes.

(c) Only the permitholder at the time of the loss, theft, destruction, or mechanical breakdown of the vessel may apply for the transfer of the vessel permit. Proof that a vessel is lost, stolen, or destroyed shall be in the form of a copy of the report filed with the United States Coast Guard or any other law enforcement agency or fire department investigating the loss.

(d) The vessel owner shall submit an application for the transfer to the department on a form provided by the department and shall pay a nonrefundable transfer fee of two hundred fifty dollars ($250) for each transfer of a market squid vessel permit or a commercial squid light boat owner's permit.

(e) The permit for the permitted vessel shall be current, and the owner of the permitted vessel shall make assurances in the transfer application that any renewal of the permit which becomes due during the application processing period will be made.

(f) The owner of the permitted vessel shall submit evidence with the transfer application sufficient to establish that he or she is the owner of the permitted vessel and the owner of the replacement vessel at the time of the application for transfer.

(g) The vessel owner shall sign the transfer application under penalty of perjury and shall certify that the information included in the application is true to the best of his or her knowledge and belief.

8428. An amount not to exceed the sum collected annually from permit fees paid pursuant to Sections 8422 and 8423 may be used for the purposes of this article, including any research that may be necessary for the development of recommendations to the Legislature.

8429. Any statement made to the department, orally or in writing, relating to a permit issued under this article, shall be made under penalty of perjury. The commission shall revoke the commercial fishing license, the commercial boat registration of any vessel, and, if applicable, any licenses issued pursuant to Section 8032, 8033, or 8034 that are held by any person submitting material false statements, as determined by the commission, for the purpose of obtaining a commercial market squid vessel permit.

8429.5. Notwithstanding any other provision of law, nothing in this article shall prohibit or otherwise limit the authority of the director or the commission under any other law.

8429.7. This article shall become inoperative on April 1, 2001, and, as of January 1, 2002, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2002, deletes or extends the dates on which it becomes inoperative and is repealed.

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 786

An act to amend Section 97.37 of the Revenue and Taxation Code, relating to local government, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. Section 97.37 of the Revenue and Taxation Code is amended to read:

97.37. (a) Notwithstanding any other provision of this chapter, for the 1994–95 fiscal year and each fiscal year thereafter, the amount of property tax revenue deemed allocated in the prior fiscal year to a county free library system, or a library established as an independent special district, shall not be reduced for purposes of increasing the amount of property tax revenue to be allocated to another jurisdiction. This section does not apply to any adjustments in property tax allocations made pursuant to Section 19116 of the Education Code.

(b) (1) This section shall not be construed to preclude allocations of ad valorem property tax revenue to a county's Educational Revenue Augmentation Fund, rather than to a county free library system or a library established as an independent special district, that are required by the application to a library system or library district, as so described, of Sections 97.2 and 97.3. The Legislature finds and declares that this paragraph does not constitute a change in, but is declaratory of, existing law.

(2) This section does not apply to any adjustments in property tax allocations made pursuant to Section 19116 of the Education Code.

(c) (1) Notwithstanding any other provision of this chapter, for those county free library systems from which the auditor had not shifted ad valorem property tax revenue to an Education Revenue Augmentation Fund as of January 1, 1996, all of the following shall apply:

(A) No allocation of ad valorem property tax revenue to a county's Educational Revenue Augmentation Fund shall be required from a county free library system that did not levy a property tax rate separate from the property tax rate of the county for the 1975–76, 1976–77, and 1977–78 fiscal years, was not entitled to an allocation of property tax revenue for the 1978–79 and 1979–80 fiscal years, and did not receive state assistance payments pursuant to Section 16260, 26912, or 26912.1 of the Government Code.

(B) No allocation of ad valorem property tax revenue to a county's Educational Revenue Augmentation Fund shall be required from a county free library system that, for the 1977–78 fiscal year, was

organized as a joint powers agency pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

(C) A county free library system established pursuant to Article 1 (commencing with Section 19100) of Chapter 6 of Part 11 of Division 1 of Title 1 of the Education Code, for which a separate property tax rate was levied in the 1977–78 fiscal year, shall be considered a special district. However, any county free library system that was not actually allocated property tax revenues pursuant to this chapter for the 1992–93 fiscal year and any portion of the 1993–94 fiscal year shall not be considered a special district for any purpose in the 1992–93 fiscal year and that portion of the 1993–94 fiscal year for which those revenues were not allocated.

(2) The Legislature finds and declares that this subdivision does not constitute a change in, but is declaratory of, existing law.

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 clarify in a timely fashion the proper allocations of ad valorem property tax revenues and the proper implementation of amendments made to Section 97.37 of the Revenue and Taxation Code by both this act and Chapter 290 of the Statutes of 1997, it is necessary that this act take effect immediately.

CHAPTER 787

An act to amend Sections 12002.6, 12002.8, 12006.6, 12009, and 13100 of, to amend and renumber Sections 8306.7, 8311, 8313, and 8314 of, to add Sections 5520, 5521, 5521.5, 5522, 7149.8, and 7149.9 to, to add Article 7 (commencing with Section 7400) to Chapter 2 of Part 2 of Division 6 of, and to repeal Sections 8300, 8300.1, 8300.2, 8301, 8302, 8303, 8304, 8305, 8305.5, 8305.8, 8305.9, 8305.10, 8305.11, 8306, 8306.1, 8306.2, 8306.3, 8306.6, 8306.9, 8308, 8309, and 8310 of, the Fish and Game Code, relating to fish, and making an appropriation therefor.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. Section 5520 is added to the Fish and Game Code, to read:

5520. It is the intent of the Legislature that the commission undertake management of abalone in a manner consistent with the abalone recovery and management plan submitted pursuant to Section 5522.

SEC. 2. Section 5521 is added to the Fish and Game Code, to read:

5521. A moratorium is imposed on the taking, possessing, or landing of abalone (genus Haliotis) for commercial or recreational purposes in ocean waters of the state south of a line drawn due west magnetic from the center of the mouth of the San Francisco Bay, including all islands offshore the mainland of California, including, but not limited to, the Farallon Islands and the Southern California Channel Islands. It is unlawful to take, possess, or land abalone for commercial or recreational purposes in those ocean waters while the moratorium is in effect.

SEC. 3. Section 5521.5 is added to the Fish and Game Code, to read:

5521.5. In addition to the moratorium imposed by Section 5521, and notwithstanding any other provision of law, it is unlawful to take abalone for commercial purposes in District 6, 7, 16, 17, or 19A, in District 10 north of Point Lobos, or in District 20 between Southeast Rock and the extreme westerly end of Santa Catalina Island.

SEC. 4. Section 5522 is added to the Fish and Game Code, to read:

5522. (a) On or before January 1, 2003, the department shall submit to the commission a comprehensive abalone recovery and management plan. The plan shall contain all of the following:

(1) An explanation of the scientific knowledge regarding the biology, habitat requirements, and threats to abalone.

(2) A summary of the interim and long-term recovery goals, including a range of alternative interim and long-term conservation and management goals and activities. The department shall report why it prefers the recommended activities.

(3) Alternatives for allocating harvest between sport and commercial divers if the allocation of the abalone harvest is warranted.

(4) An estimate of the time and costs required to meet the interim and long-term recovery goals for the species, including available or anticipated funding sources, and an initial projection of the time and costs associated with meeting the final recovery goals. An implementation schedule shall also be included.

(5) An estimate of the time necessary to meet the interim recovery goals and triggers for review and amendment of strategy.

(6) A description of 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. These criteria and procedures shall include, but not be limited to, the following:

(A) Specified abundance and size frequency distribution criteria for former abalone beds within suitable habitat not dominated by sea otters.

(B) Size frequency distributions exhibiting multiple size classes as necessary to ensure continued recruitment into fishable stock.

(C) The reproductive importance to the entire ecosystem of those areas proposed for reopening to harvest and the potential impact of each reopening on the recovery of abalone population in adjacent areas.

(b) Where appropriate, the recovery and management plan may include the following:

(1) A network of no-take abalone reserves.

(2) A total allowable catch, reflecting the long-term yield each species is capable of sustaining, using the best available science and bearing in mind the ecological importance of the species and the variability of marine ecosystems.

(3) A permanent reduction in harvest.

(c) Funding to prepare the recovery and management plan and any planning and scoping meetings shall be derived from the fees collected for the abalone stamp.

(d) On or before January 1, 2008, and following the adoption of the recovery and management plan by the commission, the department may apply to the commission to reopen sport or commercial fishing in all or any portion of the waters described in Section 5521. If the commission makes a finding that the resource can support additional harvest activities and that these activities are consistent with the abalone recovery plan, all or a portion of the waters described in Section 5521 may be reopened and management measures prescribed and implemented, as appropriate. The commission may close or, where appropriate, may establish no-take marine refuges in any area opened pursuant to this section if it makes a finding that this action is necessary to comply with the abalone management plan.

(e) If the commission determines that commercial fishing is an appropriate management measure, priority for participation in the fishery shall be given to those persons who held a commercial abalone permit during the 1996–97 permit year.

SEC. 5. Section 7149.8 is added to the Fish and Game Code, to read:

7149.8. In addition to a valid California sport fishing license and any applicable license stamp issued pursuant to Sections 7149, 7150, and 7151, a person taking abalone from ocean waters shall have permanently affixed to his or her sport fishing license an abalone stamp that may be obtained from the department or an authorized agent of the department upon payment of a fee of twelve dollars ($12).

SEC. 6. Section 7149.9 is added to the Fish and Game Code, to read:

7149.9. (a) Fees received by the department pursuant to Section 7149.8 shall be deposited in the Abalone Restoration and Preservation Account within the Fish and Game Preservation Fund, which is hereby created. Notwithstanding Section 13340 of the Government Code, the moneys in the account are continuously appropriated, without regard to fiscal year, to the department to be used only for

the Recreational Abalone Management Program. For the purposes of this article, "program" means the Recreational Abalone Management Program. The program shall include the following:

(1) Research and management of abalone and abalone habitat. For the purposes of this section, "research" includes, but is not limited to, investigation, experimentation, monitoring, and analysis; and "management" means establishing and maintaining an optimal sustainable utilization.

(2) Supplementary funding of allocations for the enforcement of statutes and regulations applicable to abalone, including, but not limited to, the acquisition of special equipment and the production and dissemination of printed materials, such as pamphlets, booklets, and posters, aimed at compliance with recreational abalone regulations.

(3) Direction for volunteer groups relating to abalone and abalone habitat management, presentations of abalone related matters at scientific conferences and educational institutions, and publication of abalone related material.

(b) At least 15 percent of the funds deposited in the account shall be used for program activities south of San Francisco. To the extent possible, participants in the management activities of the program in that area shall be former commercial abalone divers.

(c) The department shall maintain internal accounts that ensure that the fees received pursuant to Section 7149.8 are disbursed for the purposes of subdivision (a). Not more than 20 percent of the fees received pursuant to Section 7149.8 shall be used for administration by the department.

(d) Unencumbered fees collected pursuant to Section 7149.8 during any previous calendar year may be expended for the purposes of subdivisions (a) and (b). All interest and other earnings on the fees received pursuant to Section 7149.8 shall be deposited in the account and shall be used for the purposes of subdivisions (a) and (b).

SEC. 7. Article 7 (commencing with Section 7400) is added to Chapter 2 of Part 2 of Division 6 of the Fish and Game Code, to read:

Article 7. Recreational Abalone Advisory Committee

7400. (a) The director shall appoint a Recreational Abalone Advisory Committee consisting of nine members who shall serve without compensation. The members of the advisory committee shall be selected as follows:

(1) Six members who are not officers or employees of the department. The six members shall be residents of California and meet the following requirements:

(A) Two members shall reside north of the southern boundary line of Marin County and a line extending due east from the easternmost point of Marin County located in San Pablo Bay. The two members shall be selected from nominations submitted by the

Northern California Shellfish Assessment Program or by individuals or organizations that actively participate in the recreational abalone fishery, except that not more than one of the members selected shall be an active or former commercial abalone diver or involved in commercial seafood processing or marketing.

(B) Two members shall reside south of the southern boundary line of Marin County and a line extending due east from the easternmost point of Marin County located in San Pablo Bay and north of the boundary between Santa Barbara and San Luis Obispo Counties and a line extending due east from the easternmost point in that boundary line. The two members shall be selected from nominations submitted by the Central California Council of Divers, the Southern California Shellfish Assessment Program, the Northern California Shellfish Assessment Program, or by individuals or organizations that actively participate in the recreational abalone fishery, except that not more than one of the members selected shall be an active or former commercial abalone diver or involved in commercial seafood processing or marketing.

(C) Two members shall reside south of the boundary between Santa Barbara and San Luis Obispo Counties and a line extending due east from the easternmost point in that boundary line. The two members shall be selected from nominations submitted by the Greater Los Angeles Council of Divers, the San Diego Council of Divers, the Channel Islands Council of Divers, the Southern California Shellfish Assessment Program, or by individuals or organizations that actively participate in the recreational abalone fishery, except that not more than one of the members selected shall be an active or former commercial abalone diver or involved in commercial seafood processing or marketing.

(2) One member shall represent the department in enforcement activities and shall be selected from personnel in the Wildlife Protection Division.

(3) Two members shall be marine scientists who are or have been involved in abalone research at universities, state universities, or in state or federal programs. Not more than one of the persons shall be an officer or employee of the department.

(b) No member shall be involved in or profit from the culture for sale (commercial aquaculture) of abalone.

(c) The advisory committee shall meet at least once each calendar year to review proposals and recommend to the director projects and budgets for the expenditure of fees received pursuant to Section 7149.8. The committee may review progress reports and the results of projects funded under this article and make recommendations to the director regarding abalone resource management.

SEC. 8. Section 8300 of the Fish and Game Code is repealed.

SEC. 9. Section 8300.1 of the Fish and Game Code is repealed.

SEC. 10. Section 8300.2 of the Fish and Game Code is repealed.

SEC. 11. Section 8301 of the Fish and Game Code is repealed.

SEC. 12. Section 8302 of the Fish and Game Code is repealed.
SEC. 13. Section 8303 of the Fish and Game Code is repealed.
SEC. 14. Section 8304 of the Fish and Game Code is repealed.
SEC. 15. Section 8305 of the Fish and Game Code is repealed.
SEC. 16. Section 8305.5 of the Fish and Game Code is repealed.
SEC. 17. Section 8305.8 of the Fish and Game Code is repealed.
SEC. 18. Section 8305.9 of the Fish and Game Code is repealed.
SEC. 19. Section 8305.10 of the Fish and Game Code is repealed.
SEC. 20. Section 8305.11 of the Fish and Game Code is repealed.
SEC. 21. Section 8306 of the Fish and Game Code is repealed.
SEC. 22. Section 8306.1 of the Fish and Game Code is repealed.
SEC. 23. Section 8306.2 of the Fish and Game Code is repealed.
SEC. 24. Section 8306.3 of the Fish and Game Code is repealed.
SEC. 25. Section 8306.6 of the Fish and Game Code is repealed.
SEC. 26. Section 8306.7 of the Fish and Game Code is amended and renumbered to read:

12002.10. (a) When a complaint has been filed in a court of competent jurisdiction charging a person with a violation that may result in suspension or revocation of any license or permit to take abalone for commercial purposes, and no disposition of the complaint has occurred within 90 days after it has been filed in the court, the department may suspend the license or permit of that person.

(b) Whenever the department proposes to suspend a license or permit under this section, notice and an opportunity to be heard shall be given before taking the action. The notice shall contain a statement setting forth the proposed action and the grounds therefor, and notify the person of his or her right to a hearing as provided in this section. Within 10 days after the receipt of the notice from the department, the permitholder may request a hearing. The hearing shall be held by the commission at the next regularly scheduled hearing of the commission held more than 30 days after the notice of intent to suspend the permit was sent. The person shall be given 10 days' notice of the time and place of the hearing.

(c) A decision shall be made within a reasonable time on whether the license or permit shall be suspended until the disposition of the complaint by the court. In determining whether to order the suspension, the commission shall consider whether or not the violation could have a detrimental effect on the resources and whether or not a suspension is in the best public interest, and shall find whether there is sufficient evidence that a violation has occurred. A failure to make a finding that there is sufficient evidence that a violation has occurred, or a finding there is insufficient evidence, shall terminate the proceedings under this section.

(d) If the person is acquitted of the charges or the charges are dismissed, any suspension under this section is thereby terminated.

(e) No complaint shall be filed in a court charging a commercial abalone violation, unless evidence supporting the charge has been

reviewed by the appropriate county or city prosecuting agency and a criminal complaint has been issued by that agency.

SEC. 27. Section 8306.9 of the Fish and Game Code is repealed.

SEC. 28. Section 8308 of the Fish and Game Code, as amended by Section 32 of Chapter 870 of the Statutes of 1996, is repealed.

SEC. 29. Section 8308 of the Fish and Game Code, as amended by Section 32.2 of Chapter 870 of the Statutes of 1996, is repealed.

SEC. 30. Section 8309 of the Fish and Game Code is repealed.

SEC. 31. Section 8310 of the Fish and Game Code is repealed.

SEC. 32. Section 8311 of the Fish and Game Code is amended and renumbered to read:

12009.1. (a) Notwithstanding Section 12000, and in addition to Section 12009, if any person is convicted of a violation of a regulation permitting the taking of abalone under a sport fishing or sport ocean fishing license issued pursuant to Article 3 (commencing with Section 7145) of Chapter 1 of Part 2, and that person had more than seven times the number of abalone permitted to be possessed under those regulations, that person shall be fined not less than five times the prevailing market value of the abalone.

(b) In addition to the fine, upon a conviction punishable under this section, the court shall order the department to revoke, and the department shall revoke, the person's sport fishing or sport ocean fishing license for one year.

(c) If the court finds that the person convicted of a violation punishable under this section had more than seven times the number of abalone permitted, had more than seven undersized abalone, or had more than seven abalone removed from the shell, or has had his or her fishing privileges revoked pursuant to subdivision (b) for three separate convictions punishable under this section, the court shall order the department to permanently revoke, and the department shall permanently revoke, the person's sport fishing or sport ocean fishing license. A person whose sport fishing privilege is revoked pursuant to this section shall not be eligible for any license or permit, including, but not limited to, a commercial fishing license, to take or possess fish in this state for life.

(d) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

SEC. 33. Section 8313 of the Fish and Game Code is amended and renumbered to read:

8051.3. (a) Any person who is required to pay a landing tax for abalone pursuant to Sections 8041 and 8042 shall pay, in addition to the landing taxes determined pursuant to Section 8051, an additional tax of nineteen and one-half cents ($0.195) for each pound, or fraction thereof, of abalone, determined as provided in Section 8042.

(b) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

SEC. 34. Section 8314 of the Fish and Game Code is amended and renumbered to read:

8051.4. (a) The landing tax collected pursuant to Section 8051.3 shall be deposited in the Fish and Game Preservation Fund and shall be used only for the Abalone Resources Restoration and Enhancement Program. The department shall maintain internal accounts necessary to ensure that the funds are disbursed for the purposes in this subdivision. No more of the landing tax collected pursuant to Section 8051.3 than an amount equal to the regularly approved department indirect overhead rate may be used for administration by the department. Any interest on the revenues from the landing tax collected pursuant to Section 8051.3 shall be deposited in the fund and used for the purposes in this subdivision.

(b) A commercial Abalone Advisory Committee shall be appointed by the director, consisting of six members who shall serve without compensation or reimbursement of expenses. One of the members shall be a person who was required to pay landing taxes pursuant to Section 8051.3 during the 1996–97 permit year. Each of the five remaining members shall have held a commercial abalone diving permit during the 1996–97 permit year, and represent the following groups and organizations:

(1) One member shall be selected from divers with a place of residence north of Point Sur.

(2) One member shall be selected from divers with a place of residence south of Point Dume.

(3) One member shall be selected from divers with a place of residence south of Point Sur and north of Point Dume.

(4) Two members shall be selected from the membership of the California Abalone Association without regard to place of residence. This subdivision does not prohibit persons selected pursuant to paragraph (1), (2), or (3) from also being members of the California Abalone Association.

(c) The advisory committee shall make recommendations to the director and the director shall use his or her best efforts to implement those recommendations for activities to be conducted with funds collected pursuant to Section 8051.3, and those funds collected from any previous calendar year shall be available for use for those activities.

(d) 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. 35. Section 12002.6 of the Fish and Game Code is amended to read:

12002.6. (a) Notwithstanding Sections 12000, 12001, and 12002, a commercial boat registration may be revoked or suspended by the commission, when requested by the department, for a period not to exceed one year, upon the second conviction in three years of the registrant, or the registrant's agent, servant, employee, or any other

person acting under the registrant's direction or control, for a violation of any of the following provisions or regulations adopted pursuant thereto:

(1) Section 5521 or 5521.5.

(2) Article 2 (commencing with Section 8150), Article 3 (commencing with Section 8180), Article 4 (commencing with Section 8210), Article 5 (commencing with Section 8250), Article 6 (commencing with Section 8275), Article 9 (commencing with Section 8370), Article 13 (commencing with Section 8495), and Article 15 (commencing with Section 8550) of Chapter 2 of Part 3 of Division 6.

(3) Article 1 (commencing with Section 8601), Article 2 (commencing with Section 8620), Article 4 (commencing with Section 8660), Article 5 (commencing with Section 8685), Article 6 (commencing with Section 8720), Article 7 (commencing with Section 8750), Article 8 (commencing with Section 8780), and Article 10 (commencing with Section 8830) of Chapter 3 of Part 3 of Division 6.

(4) Article 1 (commencing with Section 9000) of Chapter 4 of Part 3 of Division 6.

(b) The commercial boat registration shall not be revoked unless both the first and second convictions are related to the boat for which the commercial boat registration is to be revoked, and are for violations which occurred when the person convicted was the registrant or the registrant's agent, servant, employee, or acting under the registrant's direction or control.

SEC. 36. Section 12002.8 of the Fish and Game Code is amended to read:

12002.8. (a) The court shall order the department to permanently revoke and the department shall permanently revoke, the commercial fishing license and any commercial fishing permits of any person convicted of either of the following:

(1) Taking or possessing abalone out of season.

(2) Taking or possessing abalone taken illegally from any area north of Point Sur.

(b) The court shall order the department to permanently revoke and the department shall permanently revoke the commercial fishing license and any commercial fishing permits of any person convicted of either of the following two offenses, if the person possessed more than 24 abalone at the time of the offense:

(1) Removing abalone from the shell or possessing abalone illegally removed from the shell.

(2) Taking or possessing abalone that are less than the minimum size.

(c) Any person sentenced pursuant to subdivision (a) or (b) shall not thereafter be eligible for any license or permit to take or possess fish for sport or commercial purposes.

(d) Notwithstanding Sections 12000, 12001, and 12002, the commercial fishing license of the master of a vessel may be revoked or suspended by the commission, when requested by the department, for a period not to exceed one year, upon the second conviction in three years of the master or the master's agent, servant, employee, or any other person acting under the master's direction or control, for a violation of any of the following provisions or regulations adopted pursuant thereto:

(1) Article 2 (commencing with Section 8150), Article 3 (commencing with Section 8180), Article 4 (commencing with Section 8210), Article 5 (commencing with Section 8250), Article 6 (commencing with Section 8275), Article 9 (commencing with Section 8370), Article 13 (commencing with Section 8495), and Article 15 (commencing with Section 8550) of Chapter 2 of Part 3 of Division 6.

(2) Article 1 (commencing with Section 8601), Article 2 (commencing with Section 8620), Article 4 (commencing with Section 8660), Article 5 (commencing with Section 8685), Article 6 (commencing with Section 8720), Article 7 (commencing with Section 8750), Article 8 (commencing with Section 8780), and Article 10 (commencing with Section 8830) of Chapter 3 of Part 3 of Division 6.

(3) Article 1 (commencing with Section 9000) of Chapter 4 of Part 3 of Division 6.

(e) A master's license shall not be revoked unless both the first and second convictions are for a violation by the master or a violation occurring when the person convicted was acting as the master's agent, servant, employee, or acting under the master's direction or control.

(f) The master of a vessel is the person on board the vessel who is in charge of the vessel.

SEC. 37. Section 12006.6 of the Fish and Game Code is amended to read:

12006.6. Notwithstanding Section 12000 or 12002.8, and in addition to Section 12009, and notwithstanding the type of fishing license or permit held, if any person is convicted of a violation of Section 5521 or 5521.5, and the offense occurs in an area closed to the taking of abalone for commercial purposes north of Point Lobos in District 10, and the person takes or possesses 36 or more abalone, that person shall be punished by all of the following:

(a) A fine of five times the market value of the abalone taken or in possession, or ten thousand dollars ($10,000), whichever is greater.

(b) The court shall order the department to permanently revoke, and the department shall permanently revoke, the commercial fishing license and any commercial fishing permits of that person. The person punished under this subdivision shall not, thereafter, be eligible for any license or permit to take or possess fish for sport or commercial purposes, including, but not limited to, a commercial

fishing license or a sport fishing or sport ocean fishing license. Notwithstanding any other provision of law, the commercial license or permit of a person arrested for a violation punishable under this section may not be sold, transferred, loaned, leased, or used as security for any financial transaction until disposition of the charges is final.

(c) Any vessel, diving or other fishing gear or apparatus, or vehicle used in the commission of an offense punishable under this section shall be seized, and shall be ordered forfeited in the same manner prescribed for nets or traps used in violation of this code in Article 3 (commencing with Section 8630) of Chapter 3, or in the manner prescribed in Section 12157.

(d) Not less than 50 percent of the revenue deposited in the Fish and Game Preservation Fund from fines and forfeitures collected pursuant to this section shall be allocated for the support of the Special Operations Unit of the Wildlife Protection Division of the department and used for law enforcement purposes.

SEC. 38. Section 12009 of the Fish and Game Code is amended to read:

12009. (a) Notwithstanding Section 12000, and except as provided in Section 8312, the maximum punishment for a violation of any provision of Section 5521 or 5521.5, or any regulation adopted pursuant thereto, or of Section 7121 involving abalone, is a fine of five times the market value of the abalone taken, or ten thousand dollars ($10,000), whichever is greater, imprisonment in the county jail for a period not to exceed one year, the revocation of any commercial and sport fishing licenses issued by the department for a period not to exceed 10 years, or any combination of these penalties.

(b) Notwithstanding any other provision of law, the money collected from any fine or forfeiture imposed or collected for the taking of abalone for any purpose other than for profit in violation of this article or any other provision of law shall be deposited as follows:

(1) One-half in the Abalone Restoration and Preservation Account.

(2) One-half in the county treasury of the county in which the violation occurred.

SEC. 39. Section 13100 of the Fish and Game Code is amended to read:

13100. (a) The amounts paid to and retained in the county treasury pursuant to Sections 12009 and 13003 shall be deposited in a county fish and wildlife propagation fund and expended for the protection, conservation, propagation, and preservation of fish and wildlife, under the direction of the board of supervisors, pursuant to this chapter.

SEC. 40. 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 788

An act to amend, repeal, and add Section 41705 of the Health and Safety Code, and to amend and repeal Section 43209.1 of the Public Resources Code, relating to air pollution, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. Section 41705 of the Health and Safety Code, as amended by Section 2.1 of Chapter 952 of the Statutes of 1995, is amended to read:

41705. (a) Section 41700 shall not apply to odors emanating from any of the following:

(1) Agricultural operations necessary for the growing of crops or the raising of fowl or animals.

(2) Operations that produce, manufacture, or handle compost, as defined in Section 40116 of the Public Resources Code, provided that the odors emanate directly from the compost facility or operations.

(3) Operations that compost green material or animal waste products derived from agricultural operations, and that return similar amounts of the compost produced to that same agricultural operations source, or to an agricultural operations source owned or leased by the owner, parent company, or subsidiary conducting the composting operation. The composting operation may produce an incidental amount of compost not exceeding 2,500 cubic yards of compost, which may be given away or sold annually.

(b) If a district receives a complaint pertaining to an odor emanating from a compost operation exempt from Section 41700 pursuant to paragraph (2) or (3) of subdivision (a), that is subject to the jurisdiction of an enforcement agency under Division 30 (commencing with Section 40000) of the Public Resources Code, the district shall, within 24 hours or by the next working day, refer the complaint to the enforcement agency.

(c) This section shall become inoperative on the date that is four years from the effective date of the amendments to this section enacted in 1997, and, as of January 1, 2002, is repealed, unless a later enacted statute, that becomes operative on or before that date, deletes or extends the dates on which it is inoperative and is repealed.

SEC. 2. Section 41705 of the Health and Safety Code, as amended by Section 2.2 of Chapter 952 of the Statutes of 1995, is amended to read:

41705. (a) Section 41700 shall not apply to odors emanating from agricultural operations necessary for the growing of crops or the raising of fowl or animals.

(b) This section shall become operative on the date that is four years from the effective date of the amendments to this section enacted in 1997.

SEC. 3. Section 43209.1 of the Public Resources Code is amended to read:

43209.1. (a) Notwithstanding any other provision of law, if an enforcement agency receives a complaint, pursuant to subdivision (b) of Section 41705 of the Health and Safety Code, from an air pollution control district or an air quality management district pertaining to an odor emanating from a compost facility under its jurisdiction, the enforcement agency shall, in consultation with the district, take appropriate enforcement actions pursuant to this part.

(b) On or before April 1, 1998, the board shall convene a working group consisting of enforcement agencies and air pollution control districts and air quality management districts to assist in the implementation of this section and Section 41705 of the Health and Safety Code. On or before April 1, 1999, the board and the working group shall develop recommendations on odor measurement and thresholds, complaint response procedures, and enforcement tools and take any other action necessary to ensure that enforcement agencies respond in a timely and effective manner to complaints of odors emanating from composting facilities. On or before January 1, 2000, the board shall implement the recommendations of the working group that the board determines to be appropriate.

(c) This section shall become inoperative on the date that is four years from the effective date of the amendments to this section enacted in 1997, and, as of January 1, 2002, is repealed, unless a later enacted statute, that becomes operative on or before that date, deletes or extends the dates on which it becomes inoperative and 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:

In order to maintain continuity in achieving the purposes of the California Integrated Waste Management Act of 1989, it is necessary that this act take effect immediately.

CHAPTER 789

An act relating to independent study, and making an appropriation therefor.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. (a) Notwithstanding Sections 41020 and 51747 of the Education Code or any other provision of law, the school districts specified in subdivision (f) shall be required to pay a fiscal assessment as specified in subdivision (f) with respect to independent study offered pursuant to Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 of the Education Code.

(b) This section is only applicable to a school district specified in subdivision (f) when the school district has assigned to the State of California all of its rights against all third-party consultants who received any portion of the independent study apportionments made to the school district for each of the 1990–91, 1991–92, 1992–93, 1993–94, and 1994–95 fiscal years.

(c) Notwithstanding Section 52616.17 of the Education Code the number of units of adult education average daily attendance eligible for fiscal apportionment for the school districts specified in subdivision (f) for the 1997–98 fiscal year shall be equal to 31 units of adult education average daily attendance, except that the Dos Palos-Oro Loma Joint Unified School District shall be eligible for funding for 57 units of adult education average daily attendance and the Selma Unified School District shall be eligible for funding for 48 units of adult education average daily attendance.

(d) Each fiscal assessment pursuant to subdivision (e) or (f) shall be paid over a period to be determined for each school district by the Controller, in consultation with the Department of Finance and the State Department of Education, provided that no school district shall have less than four years nor more than eight years to complete the payment. The payment schedule for subdivision (e) shall be determined within 30 days following FCMAT's final audit report. The payment schedule for subdivision (f) shall be determined by April 1, 1998. This subdivision does not preclude a school district from paying any portion of the assessment prior to the payment dates agreed to by the Controller. Commencing in the 1998–99 fiscal year, the outstanding amount of the fiscal assessment determined pursuant to

this section shall be repaid with interest calculated at the rate earned by the Pooled Money Investment Account.

(e) Each school district specified in subdivision (f) may notify the Controller, not later than 60 days following the effective date of this act, that the governing board of the school district has taken action to request that an audit of the school district's reports of adult education average daily attendance for the 1995–96 and 1996–97 fiscal years be performed by the Fiscal Crisis and Management Assistance Team (FCMAT), in which case all of the following provisions shall apply:

(1) FCMAT shall perform an audit of the school district's reports of adult education average daily attendance for the 1995–96 and 1996–97 fiscal years, using for this purpose an audit program developed by FCMAT in consultation with the State Department of Education and approved by the Department of Finance. Consistent with generally accepted auditing standards, FCMAT shall provide each audited school district with 30 days to review, and comment upon, a draft audit report, after which time, consistent with current law, the audit report shall be deemed to be final and shall be enforced by the Controller. Each final audit report shall provide a separate schedule for each audited year that shall include, at a minimum, the school district's reported adult education average daily attendance, the district's legally compliant adult education average daily attendance as determined by the audit, the school district's total actual income received for the fiscal year on account of adult education average daily attendance as reported to the state, and the school district's total income on behalf of adult education average daily attendance when the adult education average daily attendance reported to the state is adjusted by the auditor to reflect only legally compliant average daily attendance.

(2) Notwithstanding subdivision (c), the number of units of average daily attendance for which the school district is eligible to receive fiscal apportionment for the 1997–98 fiscal year pursuant to Section 52616.17 shall be equal to the number of units of legally compliant adult education average daily attendance for the 1996–97 fiscal year, as determined by the audit specified in paragraph (1).

(3) Notwithstanding any other provision of this section, if the auditor conducting the audit pursuant to paragraph (1) determines that a school district's legally compliant adult education average daily attendance for the 1995–96 fiscal year or the 1996–97 fiscal year, or both, was lower than the school district's reported adult education average daily attendance for the same years, then the auditor shall perform, and report in the final audit report, the following calculations:

(A) Determine the school district's total actual income from all sources attributable to the district's reported adult education average daily attendance for the 1995–96 and the 1996–97 fiscal years.

(B) Subtract from the amount determined in subparagraph (A) the sum of the income that the school district would have received from all sources on behalf of adult education average daily attendance if the school district had reported only valid adult education average daily attendance, as determined by the audit specified in paragraph (1), for the 1995–96 and the 1996–97 fiscal years.

(C) Add to the sum determined in subparagraph (B) the applicable amount shown for the district in the following schedule:

(i)	Carruthers Union High School District	$ 366,153
(ii)	Coalinga/Huron Joint Unified School District	$ 420,277
(iii)	Dos Palos–Oro Loma Joint Unified School District	$ 45,598
(iv)	Fowler Unified School District	$ 270,562
(v)	Kerman Unified School District	$1,125,982
(vi)	Laton Joint Unified School District	$ 112,218
(vii)	Mendota Unified School District	$ 120,976
(viii)	Parlier Unified School District	$ 610,371
(ix)	Reef–Sunset Unified School District	$ 44,478
(x)	Selma Unified School District	$ 692,793

(4) The amount determined in subparagraph (C) of paragraph (3) shall be the school district's total liability for purposes of payment to the state pursuant to this section, and the payment amount specified for the school district in subdivision (f) shall not apply.

(f) The following school districts are subject to the fiscal assessment required by this section, as specified:

(1)	Carruthers Union High School District	$ 422,108
(2)	Coalinga/Huron Joint Unified School District	$ 420,277
(3)	Dos Palos–Oro Loma Joint Unified School District	$ 266,588
(4)	Fowler Unified School District	$ 270,562
(5)	Kerman Unified School District	$1,228,107
(6)	Laton Joint Unified School District	$ 112,218
(7)	Mendota Unified School District	$ 120,976
(8)	Parlier Unified School District	$ 653,805
(9)	Reef–Sunset Unified School District	$ 44,478
(10)	Selma Unified School District	$1,139,418

(g) Full payment to the state by a school district of the fiscal assessment determined pursuant to this section, and compliance with all other conditions of this section, shall be deemed to settle all claims that may arise from audit exceptions for that school district for the 1990–91, 1991–92, 1992–93, 1993–94, 1994–95, 1995–96, and 1996–97 fiscal years with respect to the use of state funds allocated to that school district for those fiscal years for the purposes of independent study offered pursuant to Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 of the Education Code and adult education offered pursuant to Article 1 (commencing with Section 52500) of Chapter 10 of Part 28 of the Education Code.

(h) The Controller shall withhold from each school district's principal apportionments the amounts scheduled for payment pursuant to subdivision (d) of this section, in payment for the liability established pursuant to subdivision (e) or (f), whichever is applicable. The Controller shall make any necessary fiscal quantification of findings of noncompliance for each audit conducted pursuant to subdivision (e).

SEC. 2. (a) The sum of two hundred thousand dollars ($200,000) is hereby appropriated without regard to fiscal year to the county office of education that operates the county office Fiscal Crisis and Management Assistance Team pursuant to subdivision (a) of Section 42127.8 of the Education Code for the purpose of implementing subdivision (e) of Section 1 of this act.

(b) For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subdivision (a) shall be deemed to be "General Fund revenues appropriated for school district," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1997–98 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1997–98 fiscal year.

SEC. 3. The Legislature finds and declares that due to the unique circumstances described in Section 1 of this act regarding the school districts identified in that section, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

CHAPTER 790

An act to amend Sections 11302, 11315, 11360, 11410, 17550.43, 17550.44, 17550.47, 17550.49, 22443.1, 22447, and 22958 of, and to add Sections 11316, 11317, 11318, and 11409 to, the Business and

Professions Code, and to amend Section 719 of the Harbors and Navigation Code, relating to professions.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. Section 11302 of the Business and Professions Code is amended to read:

11302. For the purpose of applying this part, the following terms, unless otherwise expressly indicated, shall mean and have the following definitions:

(a) "Agency" means the Business, Transportation and Housing Agency.

(b) "Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion in a federally related transaction as to the market value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

The term "appraisal" does not include an opinion given by a real estate licensee or engineer or land surveyor in the ordinary course of his or her business in connection with a function for which a license is required under Chapter 7 (commencing with Section 6700) or Chapter 15 (commencing with Section 8700) of Division 3, or Chapter 3 (commencing with Section 10130) or Chapter 7 (commencing with Section 10500) and the opinion shall not be referred to as an appraisal. This part does not apply to a probate referee acting pursuant to Sections 400 to 408, inclusive, of the Probate Code unless the appraised transaction is federally related.

(c) "Appraisal Foundation" means the Appraisal Foundation that was incorporated as an Illinois not-for-profit corporation on November 30, 1987.

(d) "Appraisal Subcommittee" means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(e) "Director" means the Director of the Office of Real Estate Appraisers.

(f) "Federal financial institutions regulatory agency" means the Federal Reserve Board, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Office of Thrift Supervision, Federal Home Loan Bank System, National Credit Union Administration, the Resolution Trust Corporation, and any other agency determined by the director to have jurisdiction over transactions subject to this part.

(g) "Federally related real estate appraisal activity" means the act or process of making or performing an appraisal on real estate or real

property in a federally related transaction and preparing an appraisal as a result of that activity.

(h) "Federally related transaction" means any real estate-related financial transaction which a federal financial institutions regulatory agency engages in, contracts for or regulates and which requires the services of a state licensed real estate appraiser regulated by this part. This term also includes any transaction identified as such by a federal financial institutions regulatory agency.

(i) "License" means any license, certificate, permit, registration, or other means issued by the office authorizing the person to whom it is issued to act pursuant to this part within this state.

(j) "Licensure" means the procedures and requirements a person shall comply with in order to qualify for issuance of a license and includes the issuance of the license.

(k) "Office" means the Office of Real Estate Appraisers.

(*l*) "Secretary" means the Secretary of the Business, Transportation and Housing Agency.

(m) "State licensed real estate appraiser" is a person who is issued and holds a current valid license under this part.

(n) "Uniform Standards of Professional Appraisal Practice" are the standards of professional appraisal practice established by the Appraisal Foundation.

(o) "Course provider" means a person or entity that provides educational courses related to professional appraisal practice.

SEC. 2. Section 11315 of the Business and Professions Code is amended to read:

11315. (a) The director may issue to a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation a citation that may contain an order to pay an administrative fine assessed by the office if the person or entity is in violation of this part or any regulations adopted to carry out its purposes.

(b) A citation shall be written and describe with particularity the nature of the violation, including a specific reference to the provision of law determined to have been violated.

(c) If appropriate, the citation shall contain an order of abatement fixing a reasonable time for abatement of the violation.

(d) (1) If appropriate, the citation may contain an order to enroll in and successfully complete additional basic or continuing education courses.

(2) When a citation imposes an education course or courses, the completion of the course or courses by the licensee shall be subject to the following conditions:

(A) The citation imposing the education requirement may specify the specific course content, the number of hours to be completed, the

date by which the course is to be completed, and the method by which satisfaction of the order is to be reported to the office.

(B) An education course imposed by citation may not be credited towards the licensee's continuing education requirements pursuant to Section 11360.

(C) Only courses accredited by the office shall be accepted for purposes of fulfilling education imposed by citation.

(D) Any failure to satisfactorily complete or timely report an education course to the office by the date specified in the citation shall result in the automatic suspension of the licensee's appraisal license as of that date.

(E) Reinstatement of a license suspended pursuant to subparagraph (D) shall be made only if all of the following events occur:

(i) Satisfactory verification of the completion of the education course or courses imposed by the citation.

(ii) Completion and filing of a reinstatement application.

(iii) Payment of all applicable fees, fines, or penalties.

(e) In no event shall an administrative fine assessed by the office by citation or order exceed ten thousand dollars ($10,000) per violation. In assessing a fine, the office shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith of the person who committed the violation, and the history of previous violations.

(f) A citation or fine assessment issued pursuant to a citation shall inform the person cited that, if he or she desires a hearing to contest the finding of a violation, he or she must request a hearing by written notice to the office within 30 days of the date of issuance of the citation or assessment. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The citation or fine assessment shall also inform the person cited that failure to respond to the citation or fine assessment shall result in any order or administrative fine imposed becoming final, and that any order or administrative fine shall constitute an enforceable civil judgment in addition to any other penalty or remedy available pursuant to law.

(g) (1) Failure of a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation to pay a fine or required installment payment on the fine within 30 days of the date ordered in the citation, unless the citation is being appealed, shall result in disciplinary action by the office. If a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation fails to pay a fine or required installment payment on the fine within

30 days, the director shall charge him or her interest and a penalty of 10 percent of the fine or installment payment amount. Interest shall be charged at the pooled money investment rate.

(2) If a citation is not contested and a fine or fine payment is not paid within 30 days of the date ordered in the citation or other order of the director, the full amount of the unpaid balance of the assessed fine shall be added to any fee for renewal of a license. A license shall not be renewed prior to payment of the renewal fee and fine.

(3) The director may order the full amount of any fine to be immediately due and payable if any payment due on a fine is not received by the office within 30 days of its due date.

(4) Any fine, or interest thereon, not paid within 30 days of a final citation or order shall constitute a valid and enforceable civil judgment.

(5) A certified copy of the final order, or the citation with certification by the office that no request for hearing was received within 30 days of the date of issuance of the citation, shall be conclusive proof of the civil judgment, its terms, and its validity.

(h) A citation may be issued without the assessment of an administrative fine.

(i) Any administrative fine or penalty imposed pursuant to this section shall be in addition to any other criminal or civil penalty provided for by law.

(j) Administrative fines collected pursuant to this section shall be deposited in the Real Estate Appraisers Regulation Fund.

SEC. 3. Section 11316 is added to the Business and Professions Code, to read:

11316. (a) The director may assess a fine against a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation for violation of this part or any regulations adopted to carry out its purposes.

(b) (1) Failure of a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation to pay a fine or make a fine payment within 30 days of the date of assessment shall result in disciplinary action by the office. If a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation fails to pay a fine within 30 days, the director shall charge him or her interest and a penalty of 10 percent of the fine or payment amount. Interest shall be charged at the pooled money investment rate.

(2) If a fine is not paid, the full amount of the assessed fine shall be added to any fee for renewal of a license. A license shall not be renewed prior to payment of the renewal fee and fine.

(3) The director may order the full amount of any fine to be immediately due and payable if any payment on the fine, or portion thereof, is not received within 30 days of its due date.

(4) Any fine, or interest thereon, not paid within 30 days of a final order shall constitute a valid and enforceable civil judgment.

(5) A certified copy of the final order shall be conclusive proof of the validity of the order of payment and the terms of payment.

(c) Any administrative fine or penalty imposed pursuant to this section shall be in addition to any other criminal or civil penalty provided for by law.

(d) Administrative fines collected pursuant to this section shall be deposited in the Real Estate Appraisers Regulation Fund.

SEC. 4. Section 11317 is added to the Business and Professions Code, to read:

11317. The office shall publish a summary of public disciplinary actions taken by the office, including resignations while under investigation and the violations upon which these actions are based, which shall meet, at a minimum, the requirements of the appraisal subcommittee. The office shall not publish identifying information with respect to private reprovals or letters of warning, which shall remain confidential.

SEC. 5. Section 11318 is added to the Business and Professions Code, to read:

11318. (a) A licensee, applicant for licensure, course provider, or applicant for course provider accreditation shall report to the office, in writing, the occurrence of any of the following events within 30 days of the date he or she has knowledge of any of these events:

(1) The conviction of the licensee, applicant for licensure, course provider, or applicant for course provider accreditation of any of the following:

(A) A felony.

(B) Any crime related to the qualifications, functions, or duties of a licensee, or to acts or activities committed in the course of the licensee's or course provider's practice.

As used in this section, a conviction includes an initial plea, verdict, or finding of guilty, plea of no contest, or pronouncement of sentence by a trial court even though that conviction may not be final, the sentence may not be imposed, or all appeals may not be exhausted.

(2) The cancellation, revocation, or suspension of a license, other authority to practice, or refusal to renew a license or other authority to practice as an occupational or professional licensee or course provider, by any other regulatory entity.

(3) The cancellation, revocation, or suspension of the right to practice before any governmental body or agency.

(b) The report required by subdivision (a) shall be signed by the licensee, applicant for licensure, course provider, or applicant for course provider accreditation and clearly set forth the facts that constitute the reportable event. The report shall include the title of the matter, court or agency name, docket number, and dates of occurrence of the reportable event.

(c) The licensee, applicant for licensure, course provider, or applicant for course provider accreditation shall also promptly obtain and submit a certified copy of the police or administrative agency's investigative report and certified copies of the court or administrative agency's docket, complaint or accusation, and judgment or other order.

(d) A licensee, applicant for licensure, course provider, or applicant for course provider accreditation shall promptly respond to oral or written inquiries from the office concerning the reportable events.

SEC. 6. Section 11360 of the Business and Professions Code is amended to read:

11360. (a) The director shall adopt regulations governing the process and procedures for renewal of a license which shall include, but not be limited to, continuing education requirements.

(b) An applicant for renewal of a license shall be required to demonstrate his or her continuing fitness to hold a license prior to its renewal.

SEC. 7. Section 11409 is added to the Business and Professions Code, to read:

11409. (a) Except as otherwise provided by law, any order issued in resolution of a disciplinary proceeding may direct a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation found to have committed a violation or violations of statutes or regulations relating to real estate appraiser practice to pay a sum not to exceed the reasonable costs of investigation, enforcement, and prosecution of the case.

(b) Where an order for recovery of costs is made and payment is not made within 30 days of the date directed in the office's decision, the order for recovery shall constitute a valid and enforceable civil judgment. This judgment shall be in addition to, and not in place of, any other criminal or civil penalties provided for by law.

(c) (1) Failure of a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation to pay recovery costs or make a recovery cost payment within 30 days of the date ordered, shall result in disciplinary action by the office. If the person fails to pay recovery costs within 30 days,

that person shall pay interest and a penalty of 10 percent of the recovery costs or payment amount. Interest shall be charged at the pooled money investment rate.

(2) If recovery costs are not paid as ordered, the full amount of the assessed fine shall be added to any fee for renewal of a license. A license shall not be renewed prior to payment of the renewal fee and recovery costs.

(3) The director may order the full amount of any recovery costs to be immediately due and payable if any payment on the recovery costs, or portion thereof, is not received within 30 days of its due date.

(4) Any recovery costs, or interest thereon, not paid within 30 days of a final order shall constitute a valid and enforceable civil judgment.

(d) A certified copy of the office's decision shall be conclusive proof of the validity of the order and its terms.

(e) The office shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.

(f) Nothing in this section shall preclude the office from including the recovery of the costs of investigation and enforcement of a case in any default decision or stipulated settlement.

SEC. 8. Section 11410 of the Business and Professions Code is amended to read:

11410. The Real Estate Appraisers Regulation Fund is hereby created in the State Treasury to consist of moneys raised by fees and assessments imposed pursuant to this part. Interest shall be paid at the pooled money investment rate on all money transferred to the General Fund from the Real Estate Appraisers Regulation Fund, notwithstanding the provisions of Section 16310 of the Government Code.

SEC. 9. Section 17550.43 of the Business and Professions Code is amended to read:

17550.43. (a) The Travel Consumer Restitution Corporation shall establish an operations fund for the payment of costs of operations and administration. The corporation shall prepare, prior to its fiscal yearend, an estimated annual operational budget projecting the costs of operations and administration for the succeeding fiscal year, excluding the amount paid for claims.

(b) All participants registering or applying for registration shall pay to the Travel Consumer Restitution Corporation an initial, one-time thirty-five dollar ($35) assessment per location from which the participant does business in the state in order to provide additional funding for the operations of the corporation, as those operations are authorized by the corporation's board of directors.

(c) (1) All participants registering for the first time on or after January 1, 1996, shall pay the Travel Consumer Restitution Corporation the same initial two hundred dollars ($200) per location assessments for the operations of the corporation and restitution fund as were paid by participants registering in 1995.

(2) After January 1, 1996, all participants who were sellers of travel in any year, and who were not registered in that year, when registering for the first time in a subsequent year must pay the Travel Consumer Restitution Corporation all assessments for the years in which they were in business as were paid by participants registering in those years.

(d) The Travel Consumer Restitution Corporation shall establish a restitution fund for the payment of claims. All claims shall be paid from the restitution fund.

(1) The restitution fund shall be in the form of a trust account maintained in the State of California with a federally insured bank that shall be selected by the Board of Directors of the Travel Consumer Restitution Corporation and shall be approved by the office of the Attorney General. The Board of Directors of the Travel Consumer Restitution Corporation or its delegate shall serve as trustee.

(2) The restitution fund shall meet the following criteria:

(A) The trustee shall deposit all restitution funds received directly into the trust account.

(B) The trustee shall maintain a separate accounting for disbursements and collections on account of claims against each participant. Quarterly reports shall be provided to the office of the Attorney General, Consumer Law Section.

(C) The trustee shall disburse funds from the trust as directed by the Travel Consumer Restitution Corporation pursuant to Section 17550.47, directly to a person aggrieved or as provided in Section 17550.47.

(D) The trustee may only invest the operations fund and trust funds in any of the securities described in subdivision (a) or (b) of Section 16430 of the Government Code.

SEC. 10. Section 17550.44 of the Business and Professions Code is amended to read:

17550.44. (a) In addition to the assessments required by Section 17550.43, the Travel Consumer Restitution Corporation shall bill and collect from each participant an annual assessment that in the aggregate shall consist of assessments for the operations fund and the restitution fund. For each participant, the due date of that annual assessment shall be 30 days prior to the initial and annual renewal date for registration pursuant to Section 17550.20. A late fee of five dollars ($5) per day, up to a maximum of five hundred dollars ($500), shall be paid for each day after the due date specified in this section until the assessment is received by the Travel Consumer Restitution Corporation.

(b) The annual assessment for the operations fund shall be determined no later than January 15 of each year for the next fiscal year. The annual assessment for the operations fund shall not exceed thirty-five dollars ($35) per year for each location in the state from which a participant does business.

(c) If, as of January 15, 1997, or as of January 15 of any subsequent year, the balance in the restitution fund is less than one million two hundred thousand dollars ($1,200,000), the Travel Consumer Restitution Corporation shall make an annual assessment of participants, up to a maximum amount of two hundred dollars ($200) for each location in the state from which a participant does business, to bring the restitution fund to an expected balance of one million two hundred thousand dollars ($1,200,000). Every participant's assessment shall be determined pro rata based upon the ratio of the number of locations in the state from which the participant does business to the total number of locations for all registered participants as of the preceding December 15.

(d) If, on May 1 or October 15 of any year, commencing on January 1, 1997, the balance in the restitution fund is less than nine hundred thousand dollars ($900,000), the corporation shall make an emergency assessment of participants, not more than twice per year, up to a maximum amount of two hundred dollars ($200) per year for each location in the state from which the participant does business, for deposit in the trust account to return the level of the restitution fund to an expected balance of one million two hundred thousand dollars ($1,200,000). The board of directors shall adopt rules for the notification of emergency assessments.

(e) The Travel Consumer Restitution Fund shall report to the office of the Attorney General each levy of assessment within 10 business days after the levy.

SEC. 11. Section 17550.47 of the Business and Professions Code is amended to read:

17550.47. (a) (1) Any person aggrieved who suffers a loss may file a claim with the Travel Consumer Restitution Corporation. Except as provided in paragraph (2), the claim must be filed within 60 days of the date upon which the person aggrieved becomes aware, or should have become aware, of the loss.

(2) Any person aggrieved who did not receive the notice required by subdivision (h) of Section 17550.13 shall have until 60 days after receiving a notice setting forth the information required by subdivision (h) of Section 17550.13, or 60 days after the date upon which the person aggrieved becomes aware, or should have become aware, of the loss, whichever is later, within which to file a claim.

(3) In no event shall a person aggrieved have more than one year after the scheduled date of completion of travel within which to file a claim with the Travel Consumer Restitution Fund.

(b) A person aggrieved may recover from the Travel Consumer Restitution Fund an amount of no more than fifteen thousand dollars ($15,000) per person aggrieved not to exceed the amount paid to the participant for transportation or travel services. The person aggrieved shall not be entitled to receive attorney's fees in connection with a filed claim, except as provided in this section, on appeal.

(c) All claims are to be decided on the written record before the corporation, with no hearing to be held. The record shall consist of a fully executed and complete claim, any other documentation submitted by the claimant, and any documents or reports submitted by staff or the designated representative of the office of the Attorney General. Claims are to be decided within 45 days of receipt unless the designated representative of the office of the Attorney General requests a continuance to obtain and submit information. A claim not decided timely shall be deemed granted.

(d) Whenever the Travel Consumer Restitution Corporation denies a claim in whole or in part, it shall provide to the claimant a written statement of decision setting forth the factual and legal basis for the denial.

(e) A claimant or seller of travel may request reconsideration of an adverse decision of the Travel Consumer Restitution Corporation by mailing a written request within 20 days of the date a notice of denial and statement of decision was mailed to the claimant.

(f) The Travel Consumer Restitution Corporation shall decide the request for reconsideration within 30 days of receipt of the request, and if the decision is a denial in whole or in part, it shall provide to the claimant and seller of travel a written statement of decision setting forth the factual and legal basis for the decision. No appeal may be taken pursuant to subdivision (g) until reconsideration has been requested and decided. The claimant or seller of travel shall not be entitled to any attorney's fees incurred in connection with presentation of a claim or request for reconsideration.

(g) A claimant or seller of travel may only seek review of the denial of a claim by filing a notice of appeal after having served the notice by mail on the Travel Consumer Restitution Corporation. The notice of appeal shall be filed and served on the Travel Consumer Restitution Corporation not later than 30 days after a written statement of decision on a request for reconsideration has been mailed to the claimant or seller of travel. The notice of appeal from a decision of the Travel Consumer Restitution Corporation shall be filed with the clerk of the superior court either in the county in which the principal place of business of the Travel Consumer Restitution Corporation is located, or in the county in which the claimant was a resident at the time the claimant purchased the transportation or travel services in dispute.

(h) The claimant or seller of travel shall pay the same filing fee as is required for appeals from small claims court. The Travel Consumer Restitution Corporation shall file with the clerk of the superior court the record before the corporation within 30 days of the day the notice of appeal was served on the Travel Consumer Restitution Corporation.

(i) Upon the filing of the record the clerk of the court shall schedule a hearing for the earliest available time and shall mail

written notice of the hearing at least 14 days prior to the time set for the hearing.

(j) The hearing on appeal shall be limited to the record before the Travel Consumer Restitution Corporation and any relevant evidence that could not have been with reasonable diligence submitted previously to the corporation. The reviewing court shall apply a preponderance of the evidence standard of review. The pretrial discovery procedures described in subdivision (a) of Section 2019 of the Code of Civil Procedure are not permitted, there is no right to trial by jury, no tentative decision or statement of decision is required, and the decision of the superior court after a hearing on appeal is final and not appealable. No money may be claimed from or paid by the Travel Consumer Restitution Fund except in accordance with the provisions and procedures set forth in this article. No provision herein shall limit or otherwise affect those remedies as may be available against persons or entities other than the Travel Consumer Restitution Fund.

(k) If the claimant prevails in whole or in part on an appeal, the claimant shall be entitled to an award against the seller of travel of attorney's fees and costs actually and reasonably incurred in connection with the appeal. The amount of any award of attorney's fees and costs to be paid by the seller of travel shall be determined by the reviewing court.

(*l*) Any claim awarded by the corporation shall be paid promptly by the trustee of the restitution fund when the time for appeal has passed or the right to an appeal is waived in writing by the claimant. Any judgment on appeal shall be paid promptly by the trustee of the restitution fund. If there should be insufficient funds to pay a claim when otherwise due, claims shall be paid in the order received. If the Travel Consumer Restitution Corporation ceases to operate pursuant to the terms of Section 17550.52, any remaining trust funds shall be allocated on a pro rata basis to claims accruing prior to the corporation ceasing to operate.

(m) A claim shall require a majority of at least three affirmative votes for denial, otherwise it shall be deemed granted.

SEC. 12. Section 17550.49 of the Business and Professions Code is amended to read:

17550.49. If the Travel Consumer Restitution Corporation directs that payment be made from the restitution fund in any amount in response to a claim against a participant, the corporation shall inform the office of the Attorney General and shall maintain a record of all claims paid from the fund. A list of those sellers of travel on whose account payment has been made from the fund shall be provided upon written request. The corporation shall have the authority and discretion to determine whether or not to seek recovery from a seller of travel of any amounts paid from the fund. The corporation may seek that recovery by any lawful means, including, but not limited to, debt collection or civil litigation. If the corporation seeks recovery,

it shall be entitled to collect from any seller of travel against which action is taken all reasonable expenses incurred in taking the action, including attorney's fees. The corporation shall also be entitled to interest at the rate of 9 percent per year on the amount paid from the fund, together with all expenses and costs incurred by the corporation in connection with the claim.

SEC. 13. Section 22443.1 of the Business and Professions Code is amended to read:

22443.1. (a) Prior to engaging in the business or acting in the capacity of an immigration consultant on or after January 1, 1998, each person shall file with the Secretary of State a bond of twenty-five thousand dollars ($25,000) executed by a corporate surety qualified to do business in this state and conditioned upon compliance with this chapter. The total aggregate liability on the bond shall be limited to twenty-five thousand dollars ($25,000). The bond may be terminated pursuant to Section 995.440 of, and Article 13 (commencing with Section 996.310) of Chapter 2 of Title 14 of Part 2 of, the Code of Civil Procedure.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California and shall be for the benefit of any person damaged by any fraud, misstatement, misrepresentation, unlawful act or omission, or failure to provide the services of the immigration consultant or the agents, representatives, or employees of the immigration consultant while acting within the scope of that employment or agency.

(c) The Secretary of State shall charge and collect a filing fee to cover the cost of filing the bond or the deposit filed in lieu of a bond as set forth in Section 995.710 of the Code of Civil Procedure.

(d) The Secretary of State shall enforce the provisions of this chapter that govern the filing and maintenance of bonds and deposits in lieu of bonds.

(e) A deposit may be made in lieu of a bond as set forth in Section 995.710 of the Code of Civil Procedure. When a deposit is made in lieu of the bond, the person asserting the claim against the deposit shall establish the claim by furnishing evidence to the Secretary of State of a money judgment entered by a court together with evidence that the claimant is a person described in subdivision (b).

(f) When a claimant has established the claim with the Secretary of State, the Secretary of State shall review and approve the claim and enter the date of approval thereon. The claim shall be designated an "approved claim."

(g) When the first claim against a particular deposit has been approved, it shall not be paid until the expiration of a period of 240 days after the date of its approval by the Secretary of State. Subsequent claims that are approved by the Secretary of State within the same 240-day period shall similarly not be paid until the expiration of the 240-day period. Upon the expiration of the 240-day period, the Secretary of State shall pay all approved claims from that

240-day period in full unless the deposit is insufficient, in which case each approved claim shall be paid a pro rata share of the deposit.

(h) When the Secretary of State approves the first claim against a particular deposit after the expiration of a 240-day period, the date of approval of that claim shall begin a new 240-day period to which subdivision (g) shall apply with respect to any amount remaining in the deposit.

(i) After a deposit is exhausted, no further claims shall be paid by the Secretary of State. Claimants who have had claims paid in full or in part pursuant to subdivision (g) or (h) shall not be required to return funds received from the deposit for the benefit of other claimants.

(j) When a deposit has been made in lieu of bond, the amount of the deposit shall not be subject to attachment, garnishment, or execution with respect to an action or judgment against the assignor of the deposit, other than as to an amount as no longer needed or required for the purpose of this title which would otherwise be returned to the assignor of the deposit by the Secretary of State.

(k) The Secretary of State shall retain a cash deposit for two years from the date the Secretary of State receives written notification from the assignor of the deposit that the assignor has ceased to engage in the business or act in the capacity of an immigration consultant or has filed a bond pursuant to subdivision (a), provided that there are no outstanding claims against the deposit. The written notice shall include all of the following: (1) name, address, and telephone number of the assignor; (2) name, address, and telephone of the bank at which the deposit is located; (3) account number of the deposit; and (4) a statement whether the assignor is ceasing to engage in the business or act in the capacity of an immigration consultant or has filed a bond with the Secretary of State. The Secretary of State shall forward an acknowledgment of receipt of the written notice to the assignor at the address indicated therein, specifying the date of receipt of the written notice and anticipated date of release of the deposit, provided there are no outstanding claims against the deposit.

(*l*) This section shall apply to all deposits retained by the Secretary of State. The Secretary of State shall notify each assignor of a deposit retained by the Secretary of State on January 1, 1997, of the applicability of this section on or before January 11, 1997.

(m) A judge of a municipal or superior court may order the return of the deposit prior to the expiration of two years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit or order the Secretary of State to retain the deposit for a specified period beyond the two years pursuant to subdivision (*l*) to resolve outstanding claims against the deposit.

(n) This section does not apply to employees of nonprofit, tax-exempt corporations who help clients complete application forms in immigration matters, either free of charge or for a fee. Any fees charged may include reasonable costs and shall be consistent

with fees authorized by the United States Immigration and Naturalization Service for qualified designated entities.

(o) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 14. Section 22447 of the Business and Professions Code is amended to read:

22447. (a) A person who is awarded damages in an action or proceeding for injuries caused by the acts of a person engaged in the business of, or acting in the capacity of, an immigration consultant, in the performance of his or her duties as an immigration consultant, may recover damages from the bond or deposit required by Section 22443.1.

(b) When any claim or claims against a bond or a deposit in lieu of a bond have been paid so as to reduce the principal amount of the bond or deposit remaining available to pay claims below the principal amount required by Section 22443.1, the immigration consultant shall cease to conduct any business unless and until that time as the bond has been reinstated or moneys have been deposited in the deposit account with the Secretary of State to bring the bond or deposit account balance available for the payment of claims up to the minimum amount required by Section 22443.1.

(c) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

SEC. 15. Section 22958 of the Business and Professions Code, as amended by Chapter 220 of the Statutes of 1997, is amended to read:

22958. (a) The state department may assess civil penalties against any person, firm, or corporation that sells, gives, or in any way furnishes to another person who is under the age of 18 years, any tobacco, cigarette, or cigarette papers, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, according to the following schedule: (1) a civil penalty of from two hundred dollars ($200) to three hundred dollars ($300) for the first violation, (2) a civil penalty of from six hundred dollars ($600) to nine hundred dollars ($900) for the second violation within a five-year period, (3) a civil penalty of from one thousand two hundred dollars ($1,200) to one thousand eight hundred dollars ($1,800) for a third violation within a five-year period, (4) a civil penalty of from three thousand dollars ($3,000) to four thousand dollars ($4,000) for a fourth violation within a five-year period, or (5) a civil penalty of from five thousand dollars ($5,000) to six thousand dollars ($6,000) for a fifth or subsequent violation within a five-year period.

(b) The state department shall assess penalties in accordance with the schedule set forth in subdivision (a) against any person, firm, or corporation that sells, offers for sale, or distributes tobacco products

from a cigarette or tobacco products vending machine, or any person, firm, or corporation that leases, furnishes, or services these machines in violation of Section 22960.

(c) The state department shall assess penalties in accordance with the schedule set forth in subdivision (a) against any person, firm, or corporation that advertises or causes to be advertised any tobacco product on any outdoor billboard in violation of Section 22961.

(d) If a civil penalty has been assessed pursuant to this section against any person, firm, or corporation for a single, specific violation of this division, the person, firm, or corporation shall not be prosecuted under Section 308 of the Penal Code for a violation based on the same facts or specific incident for which the civil penalty was assessed. If any person, firm, or corporation has been prosecuted for a single, specific violation of Section 308 of the Penal Code, the person, firm, or corporation shall not be assessed a civil penalty under this section based on the same facts or specific incident upon which the prosecution under Section 308 of the Penal Code was based.

(e) (1) In the case of a corporation or business with more than one retail location, to determine the number of accumulated violations for purposes of the penalty schedule set forth in subdivision (a), violations of this division by one retail location shall not be accumulated against other retail locations of that same corporation or business.

(2) In the case of a retail location that operates pursuant to a franchise as defined in Section 20001, violations of this division accumulated and assessed against a prior owner of a single franchise location shall not be accumulated against a new owner of the same single franchise location for purposes of the penalty schedule set forth in subdivision (a).

(f) Proceedings under this section shall be conducted in accordance with Section 100171 of the Health and Safety Code.

SEC. 30. Section 719 of the Harbors and Navigation Code is amended to read:

719. (a) A person shall be deemed qualified to submit an application for a broker's license if, as shown on the department's records, the person has been employed, within five years preceding his or her application, as a licensed salesperson for at least one year, has been licensed as a broker within five years preceding his or her application, has owned and operated a marine business selling new or used yachts for a minimum of three continuous years immediately preceding application for a broker's license, or has been employed as a broker or a yacht salesperson in another state when that employment was a primary occupation for a minimum of three continuous years immediately preceding application for a broker's license in California. Proof of employment as a broker in another state or as a marine business selling new or used yachts in California shall be in the form of all of the following:

(1) State, if applicable, and federal income tax returns, or a proof of earning statement made by the applicant under penalty of perjury, for the three-year period preceding application in California.

(2) If bonded, a statement issued by the applicant's bonding company that no action has been taken against the bond for fraud or gross misrepresentation for the period for which the bond has been issued.

(3) A copy of all business permits, issued by any state, county, or city agency, which, if applicable, includes the fictitious business name ("dba" or "doing business as") under which the applicant conducted a yacht or ship brokerage business or a marine business selling new or used yachts in California for the three-year period preceding application for a California broker's license.

(4) If the applicant conducts a yacht or ship brokerage business in another state that requires broker or salesperson licensing, evidence of a current license in that state.

(b) If the applicant is a partnership, then one of the partners of the applicant shall have the foregoing qualifications.

(c) If the applicant is a corporation, then the officer or officers of the corporation to be designated for a license as provided in this article shall have the foregoing qualifications.

(d) If the applicant is an individual, the applicant shall be at least 18 years of age.

CHAPTER 791

An act to amend Sections 1636.5 and 1724 of the Business and Professions Code, and to amend Section 4 of Chapter 1299 of the Statutes of 1992, relating to dentistry, and making an appropriation therefor.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. Section 1636.5 of the Business and Professions Code is amended to read:

1636.5. (a) Notwithstanding Section 135, on and after January 1, 1993, an applicant who fails to pass the examination required by paragraph (2) of subdivision (c) of Section 1636 after four attempts shall not be eligible for further reexamination until the applicant has successfully completed a minimum of two academic years of education at a dental school approved by either the Commission on Dental Accreditation or a comparable organization 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 the requirements of this subdivision.

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

SEC. 2. Section 1724 of the Business and Professions Code is amended to read:

1724. The amount of charges and fees for dentists licensed pursuant to this chapter shall be established by the board as is necessary for the purpose of carrying out the responsibilities required by this chapter as it relates to dentists, subject to the following limitations:

(a) The fee for application for examination shall not exceed five hundred dollars ($500).

(b) The fee for application for reexamination shall not exceed one hundred dollars ($100).

(c) The fee for examination and for reexamination shall not exceed eight hundred dollars ($800). Applicants who are found to be ineligible to take the examination shall be entitled to a refund in an amount fixed by the board.

(d) The fee for an initial license and for the renewal of a license shall not exceed four hundred fifty dollars ($450).

(e) The delinquency fee shall be the amount prescribed by Section 163.5.

(f) The penalty for late registration of change of place of practice shall not exceed seventy-five dollars ($75).

(g) The application fee for permission to conduct an additional place of practice shall not exceed two hundred dollars ($200).

(h) The renewal fee for an additional place of practice shall not exceed one hundred dollars ($100).

(i) The fee for issuance of a substitute certificate shall not exceed one hundred twenty-five dollars ($125).

(j) The fee for a provider of continuing education shall not exceed two hundred fifty dollars ($250) per year.

(k) The fee for application for a referral service permit and for renewal of that permit shall not exceed twenty-five dollars ($25).

(*l*) The fee for application for an extramural facility permit and for the renewal of a permit shall not exceed twenty-five dollars ($25).

The board shall report to the appropriate fiscal committees of each house of the Legislature whenever the board increases any fee pursuant to this section and shall specify the rationale and justification for that increase.

SEC. 3. Section 4 of Chapter 1299 of the Statutes of 1992 is amended to read:

Sec. 4. (a) The Legislature finds and declares that the requirement of completion of a minimum of two academic years of dental education does not result in undue hardship upon, or adversely impact, international dental candidates.

(b) (1) The Board of Dental Examiners shall collect data on the international dental candidates who are admitted to, and take, the restorative technique examination on and after January 1, 1993. The board shall report to the Legislature between June 1, 1998, and December 31, 1998, inclusive, on the impact of Section 1636.5 of the Business and Professions Code on those international dental candidates about whom the data is collected pursuant to this subdivision.

(2) The report prepared pursuant to this subdivision shall include, for each administration of the restorative technique examination, all of the following information:

(A) The number of international dental candidates who fail the examination for the third time.

(B) The number of international dental candidates who, after failing the examination for the third time, apply to international dental studies programs in California, and the number of these candidates accepted by these programs.

(C) The number of international dental candidates who, after failing the examination for the third time, apply to any dental studies program, in or out of California, and the number of these candidates accepted by these programs.

SEC. 5. Section 1 of this bill shall not become operative if AB 1116 is enacted and also amends Section 1636.5 of the Business and Professions Code.

CHAPTER 792

An act to amend Section 1636.5 of, to amend and repeal Section 1636 of, to amend, repeal, and add Section 1628 of, and to add Sections 1636.4, 1636.6, and 1700.5 to, the Business and Professions Code, relating to dentistry, and making an appropriation therefor.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

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

SECTION 1. Section 1628 of the Business and Professions Code is amended to read:

1628. Any person over 18 years of age is eligible to take an examination before the board upon making application therefor and meeting all of the following requirements:

(a) Paying the fee for applicants for examination provided by this chapter.

(b) Furnishing satisfactory evidence of having graduated from a reputable dental college, which shall have been approved by the board; provided, also, that applicants furnishing evidence of having

graduated after 1921 shall also present satisfactory evidence of having completed at such dental school or schools the full number of academic years of undergraduate courses required for graduation.

(c) Furnishing the satisfactory evidence of financial responsibility or liability insurance for injuries sustained or claimed to be sustained by a dental patient in the course of the examination as a result of the applicant's actions.

(d) 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. 2. Section 1628 is added to the Business and Professions Code, to read:

1628. Any person over 18 years of age is eligible to take an examination before the board upon making application therefor and meeting all of the following requirements:

(a) Paying the fee for applicants for examination provided by this chapter.

(b) Furnishing satisfactory evidence of having graduated from a reputable dental college, which shall have been approved by the board; provided, also, that applicants furnishing evidence of having graduated after 1921 shall also present satisfactory evidence of having completed at such dental school or schools the full number of academic years of undergraduate courses required for graduation.

(c) Furnishing the satisfactory evidence of financial responsibility or liability insurance for injuries sustained or claimed to be sustained by a dental patient in the course of the examination as a result of the applicant's actions.

(d) If the applicant has been issued a degree of doctor of dental medicine or doctor of dental surgery by a foreign dental school, he or she shall furnish all of the following documentary evidence to the board:

(1) That he or she has completed in a dental school or schools approved by the board pursuant to Section 1636.4, a resident course of professional instruction in dentistry for the full number of academic years of undergraduate courses required for graduation.

(2) Subsequent thereto, he or she has been issued by the approved dental school, a dental diploma or a dental degree, as evidence of the completion of the course of dental instruction required for graduation.

(e) Any applicant, who has been issued a dental diploma from a foreign dental school, which has not been approved by the board pursuant to Section 1636.4 at the time of his or her graduation from the school, shall not be eligible for examination until the applicant has successfully completed a minimum of two academic years of education at a dental college approved by the board pursuant to Article 1 (commencing with Section 1024) of Chapter 2 of Division 10 of Title 16 of the California Code of Regulations. This subdivision

shall not apply to applicants who have successfully completed the requirements of Section 1636 on or before December 31, 2002.

(f) This section shall become operative on January 1, 2003.

SEC. 3. Section 1636 of the Business and Professions Code is amended to read:

1636. (a) Notwithstanding subdivision (b) of Section 1628, a person who has been issued a degree of doctor of dental medicine or doctor of dental surgery by a foreign dental school shall be eligible for examination as provided in this section upon complying with subdivisions (a) and (c) of Section 1628 and furnishing all of the following documentary evidence satisfactory to the board, that:

(1) He or she has completed in a dental school or schools a resident course of professional instruction in dentistry for the full number of academic years of undergraduate courses required for graduation.

(2) Subsequent thereto, he or she has been issued by the dental school, a dental diploma or a dental degree, as evidence of the completion of the course of dental instruction required for graduation.

(b) An applicant who is a graduate of a foreign dental school accredited by a body which has a reciprocal accreditation agreement with any commission or accreditation agency whose findings are accepted by the board shall be exempt from the qualifying examination provided for in paragraph (2) of subdivision (c).

(c) Examination by the board of a foreign-trained dental applicant shall be a progressive examination given in the following sequence:

(1) Examination in writing which shall be comprehensive and sufficiently thorough to test the knowledge, skill, and competence of the applicant to practice dentistry, and both questions and answers shall be written in the English language.

The written examination may be the National Board of Dental Examiners' examination or other examination, but in no event shall the examination given to foreign-trained applicants be a different examination than that given to applicants who have met the requirements of subdivision (b) of Section 1628. A foreign-trained applicant who passes the written examination shall be permanently exempt from retaking the examination.

Those applicants who have passed the California written examination are permanently exempt from retaking any written examination, except any examination required for continuing education purposes.

(2) Demonstration of the applicant's skill in restorative technique. An applicant who obtains an overall average grade of 75 percent in the restorative technique examination and a grade of 75 percent or more in two of the three subsections shall be deemed to have passed the examination. However, an applicant who obtains a grade of 85 percent in any subsection of the examination is exempt from retaking the subsection for two years following the date of the examination in which a grade of 85 percent was obtained. Every applicant who

passes the entire restorative technique examination is permanently exempt from retaking the examination.

(d) An applicant who has successfully completed the written examination and the restorative technique examination shall be eligible to take and shall pass the examinations in diagnosis-treatment planning, prosthetic dentistry, diagnosis and treatment of periodontics, and operative dentistry in the identical manner in which the examinations are taken by and administered to other dental applicants. Exemptions in the examinations shall be applied to foreign-trained applicants in the same manner as they are applied to other dental applicants.

(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. 4. Section 1636.4 is added to the Business and Professions Code, to read:

1636.4. (a) The Legislature recognizes the need to ensure that graduates of foreign dental schools who have received an education that is equivalent to that of accredited institutions in the United States and that adequately prepares their students for the practice of dentistry shall be subject to the same licensure requirements as graduates of approved dental schools or colleges. It is the purpose of this section to provide for the evaluation of foreign dental schools and the approval of those foreign dental schools that provide an education that is equivalent to that of similar accredited institutions in the United States and that adequately prepare their students for the practice of dentistry.

(b) The board shall be responsible for the approval of foreign dental schools based on standards established pursuant to subdivision (d). The board may contract with outside consultants or a national professional organization to survey and evaluate foreign dental schools. The consultant or organization shall report to the board regarding its findings in the survey and evaluation.

(c) The board shall establish a technical advisory group to review and comment upon the survey and evaluation of a foreign dental school contracted for pursuant to subdivision (b), prior to any final action by the board regarding certification of the foreign dental school. The technical advisory group shall be selected by the board and shall consist of four dentists, two of whom shall be selected from a list of five recognized United States dental educators recommended by the foreign school seeking approval. None of the members of the technical advisory group shall be affiliated with the school seeking certification.

(d) Any foreign dental school that wishes to be approved pursuant to this section shall make application to the board for this approval, which shall be based upon a finding that the educational program of the foreign dental school is equivalent to that of similar accredited institutions in the United States and adequately prepares its students

for the practice of dentistry. Curriculum, faculty qualifications, student attendance, plant and facilities, and other relevant factors shall be reviewed and evaluated. The board, with the cooperation of the technical advisory group, shall identify by rule the standards and review procedures and methodology to be used in the approval process consistent with this subdivision. The board shall not grant approval if deficiencies found are of such magnitude as to prevent the students in the school from receiving an educational base suitable for the practice of dentistry.

(e) Periodic surveys and evaluations of all approved schools shall be made to ensure continued compliance with this section. Approval shall include provisional and full approval. The provisional form of approval shall be for a period determined by the board, not to exceed three years, and shall be granted to an institution, in accordance with rules established by the board, to provide reasonable time for the school seeking permanent approval to overcome deficiencies found by the board. Prior to the expiration of a provisional approval and before the full approval is granted, the school shall be required to submit evidence that deficiencies noted at the time of initial application have been remedied. A school granted full approval shall provide evidence of continued compliance with this section. In the event that the board denies approval or reapproval, the board shall give the school a specific listing of the deficiencies that caused the denial and the requirements for remedying the deficiencies, and shall permit the school, upon request, to demonstrate by satisfactory evidence, within 90 days, that it has remedied the deficiencies listed by the board.

(f) A school shall pay a registration fee established by rule of the board, not to exceed one thousand dollars ($1,000), at the time of application for approval and shall pay all reasonable costs and expenses the board incurs for the conduct of the approval survey.

(g) The board shall renew approval upon receipt of a renewal application, accompanied by a fee not to exceed five hundred dollars ($500). Each fully approved institution shall submit a renewal application every seven years. Any approval that is not renewed shall automatically expire.

SEC. 5. Section 1636.5 of the Business and Professions Code is amended to read:

1636.5. (a) Notwithstanding Section 135, on and after January 1, 1993, an applicant who fails to pass the examination required by paragraph (2) of subdivision (c) of Section 1636 after four attempts shall not be eligible for further reexamination until the applicant has successfully completed a minimum of two academic years of education at a dental school approved by either the Commission on Dental Accreditation or a comparable organization 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 the requirements of this subdivision.

(b) 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. 6. Section 1636.6 is added to the Business and Professions Code, to read:

1636.6. The Legislature hereby finds and declares that in order to assure that the people of California receive the highest quality of dental care, dentists graduating from dental schools outside of the United States who apply for licensure in California must possess the same training and skills as applicants from schools that have been approved by the board. The Legislature further finds and declares that the current process for ensuring the adequacy of training of these applicants is deficient, that high numbers of foreign dental graduates are failing the restorative technique examination required in Section 1636, and that there are numerous repeat failures. The Legislature further finds and declares that while current law requires that a foreign dental graduate who fails the restorative technique examination is required to take a minimum of two years of additional training from a dental school approved by the board, only three of the five dental schools operating in California offer a two-year course of study for graduates of foreign dental schools.

Therefore, the Legislature hereby urges all dental schools in this state to provide in their curriculum a two-year course of study that may be utilized by graduates of foreign dental schools to attain the prerequisites for licensure in California.

SEC. 7. Section 1700.5 is added to the Business and Professions Code, to read:

1700.5. Notwithstanding Section 1700, any person who holds a valid, unrevoked, and unsuspended certificate as a dentist under this chapter may append the letters "D.D.S." to his or her name, regardless of the degree conferred upon him or her by the dental college from which the licensee graduated.

CHAPTER 793

An act to amend Section 1228.1 of the Evidence Code, to amend Sections 8614, 8700, and 8715 of, and to add Sections 8714.5 and 8714.7 to, the Family Code, to amend Sections 1502 and 1505 of, and to add Section 1505.2 to, the Health and Safety Code, and to amend Sections 309, 319, 355, 358.1, 361, 361.3, 361.5, 366, 366.21, 366.22, 366.23, 366.26, 366.3, 387, 11400, 16206, and 16501.1 of, and to add Section 316.2 to, the Welfare and Institutions Code, relating to minors.

[Approved by Governor October 8, 1997. Filed with Secretary of State October 9, 1997.]

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

SECTION 1. Section 1228.1 of the Evidence Code is amended to read:

1228.1. (a) Except as provided in subdivision (b), neither the signature of any parent or legal guardian on a child welfare services case plan nor the acceptance of any services prescribed in the child welfare services case plan by any parent or legal guardian shall constitute an admission of guilt or be used as evidence against the parent or legal guardian in a court of law.

(b) A 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 may be used as evidence, if relevant, in any hearing held pursuant to Section 366.21, 366.22, or 388 of the Welfare and Institutions Code and at any jurisdictional or dispositional hearing held on a petition filed pursuant to Section 300, 342, or 387 of the Welfare and Institutions Code.

SEC. 2. Section 8614 of the Family Code is amended to read:

8614. Upon the request of the adoptive parents or the adopted child, a county clerk may issue a certificate of adoption that states the date and place of adoption, the birthday of the child, the names of the adoptive parents, and the name the child has taken. Unless the child has been adopted by a stepparent or by a relative, as defined in subdivision (c) of Section 8714.7, the certificate shall not state the name of the birth parents of the child.

SEC. 3. Section 8700 of the Family Code is amended to read:

8700. (a) Either birth parent may relinquish a child to the department or a licensed adoption agency for adoption by a written statement signed before two subscribing witnesses and acknowledged before an authorized official of the department or agency. The relinquishment, when reciting that the person making it is entitled to the sole custody of the child and acknowledged before the officer, is prima facie evidence of the right of the person making it to the sole custody of the child and the person's sole right to relinquish.

(b) A relinquishing parent who is a minor has the right to relinquish his or her child for adoption to the department or a licensed adoption agency, and the relinquishment is not subject to revocation by reason of the minority.

(c) If a relinquishing parent resides outside this state and the child is being cared for and is or will be placed for adoption by the department or a licensed adoption agency, he or she may relinquish the child to the department or agency by a written statement signed by the relinquishing parent before a notary on a form prescribed by the department, and previously signed by an authorized official of the department or agency, which signifies the willingness of the department or agency to accept the relinquishment.

(d) The relinquishment authorized by this section has no effect until a certified copy is filed with the department. Upon filing with the department, the relinquishment is final and may be rescinded only by the mutual consent of the department or licensed adoption agency to which the child was relinquished and the birth parent or parents relinquishing the child.

(e) The relinquishing parent may name in the relinquishment the person or persons with whom he or she intends that placement of the child for adoption be made by the department or licensed adoption agency.

(f) Notwithstanding subdivision (d), if the relinquishment names the person or persons with whom placement by the department or licensed adoption agency is intended and the child is not placed in the home of the named person or persons or the child is removed from the home prior to the granting of the adoption, the department or agency shall mail a notice by certified mail, return receipt requested, to the birth parent signing the relinquishment within 72 hours of the decision not to place the child for adoption or the decision to remove the child from the home.

(g) The relinquishing parent has 30 days from the date on which the notice described in subdivision (f) was mailed to rescind the relinquishment.

(1) If the relinquishing parent requests rescission during the 30-day period, the department or licensed adoption agency shall rescind the relinquishment.

(2) If the relinquishing parent does not request rescission during the 30-day period, the department or licensed adoption agency shall select adoptive parents for the child.

(3) If the relinquishing parent and the department or licensed adoption agency wish to identify a different person or persons during the 30-day period with whom the child is intended to be placed, the initial relinquishment shall be rescinded and a new relinquishment identifying the person or persons completed.

(h) If the parent has relinquished a child, who has been found to come within Section 300 of the Welfare and Institutions Code or is the subject of a petition for jurisdiction of the juvenile court under Section 300 of the Welfare and Institutions Code, to the department or a licensed adoption agency for the purpose of adoption, the department or agency accepting the relinquishment shall provide written notice of the relinquishment within five court days to all of the following:

(1) The juvenile court having jurisdiction of the child.

(2) The child's attorney, if any.

(3) The relinquishing parent's attorney, if any.

(i) The filing of the relinquishment with the department terminates all parental rights and responsibilities with regard to the child, except as provided in subdivisions (f) and (g).

SEC. 4. Section 8714.5 is added to the Family Code, to read:

8714.5. (a) The Legislature finds and declares the following:

(1) It is the intent of the Legislature to expedite legal permanency for children who cannot return to their parents and to remove barriers to adoption by relatives of children who are already in the dependency system or who are at risk of entering the dependency system.

(2) This goal will be achieved by empowering families, including extended families, to care for their own children safely and permanently whenever possible, by preserving existing family relationships, thereby causing the least amount of disruption to the child and the family, and by recognizing the importance of sibling and half-sibling relationships.

(b) A relative desiring to adopt a child may for that purpose file a petition in the county in which the petitioner resides. Where a child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and thereafter has been freed for adoption by the juvenile court, the petition may be filed either in the county where the petitioner resides or in the county where the child was freed for adoption.

(c) Upon the filing of a petition for adoption by a relative, the county clerk shall immediately notify the State Department of Social Services in Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(d) If the adopting relative has entered into a kinship adoption agreement with the birth parent as set forth in Section 8714.7, the kinship adoption agreement, signed by the parties to the agreement, shall be attached to and filed with the petition for adoption under subdivision (b).

(e) The caption of the adoption petition shall contain the name of the relative petitioner. The petition shall state the child's name, sex, and date of birth.

(f) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioner shall notify the court of any petition for adoption. The guardianship proceeding shall be consolidated with the adoption proceeding.

(g) The order of adoption shall contain the child's adopted name and, if requested by the adopting relative, or if requested by the child who is 12 years of age or older, the name the child had before adoption.

SEC. 5. Section 8714.7 is added to the Family Code, to read:

8714.7. (a) Nothing in the adoption laws of this state shall be construed to prevent the adopting parent or parents, the birth relatives, including the birth parent or parents, and the child from entering into a written agreement to permit continuing contact between the birth relatives, including the birth parent or parents, and the child if the agreement is found by the court to be in the best

interests of the child at the time the adoption petition is granted. The terms of any kinship adoption agreement executed under this section shall be limited to, but need not include, all of the following:

(1) Provisions for visitation between the child and a birth parent or parents and other birth relatives, including siblings.

(2) Provisions for future contact between a birth parent or parents or other birth relatives, including siblings, or both, and the child or an adoptive parent, or both.

(3) Provisions for the sharing of information about the child in the future.

(b) At the time an adoption decree is entered pursuant to a petition filed under Section 8714.5, the court entering the decree may grant postadoption privileges when an agreement for those privileges has been entered into pursuant to subdivision (a).

(c) This section is applicable only to kinship adoption agreements in which the adopting parent is a relative of the child or a relative to the child's half-sibling and the adoption petition is filed under Section 8714.5. For purposes of this section and Section 8714.5, "relative" means an adult who is related to the child or the child's half sibling by blood or affinity, including all relatives 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.

(d) The child who is the subject of the adoption petition shall be considered a party to the kinship adoption agreement. The written consent to the terms and conditions of the kinship adoption agreement and any subsequent modifications of the agreement by a child who is 12 years of age and older is a necessary condition to the granting of privileges regarding visitation, contact, or sharing of information about the child, unless the court finds by a preponderance of the evidence that the agreement, as written, is in the best interests of the child. Any child who has been found to come within Section 300 of the Welfare and Institutions Code or who is the subject of a petition for jurisdiction of the juvenile court under Section 300 of the Welfare and Institutions Code shall be represented by an attorney for purposes of consent to the kinship adoption agreement.

(e) A kinship adoption agreement shall contain the following warnings in bold type:

(1) After the adoption petition has been granted by the court, the adoption cannot be set aside due to the failure of an adopting parent, a birth parent, a birth relative, or the child to follow the terms of this agreement or a later change to this agreement.

(2) A disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the adoption and shall not serve as a basis for orders affecting the custody of the child.

(3) A court will not act on a petition to change or enforce this agreement unless the petitioner has participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings to resolve the dispute.

(f) Upon the granting of the adoption petition and the issuing of the order of adoption of a child who is a dependent of the juvenile court, juvenile court dependency jurisdiction shall be terminated. Enforcement of the kinship adoption agreement shall be under the continuing jurisdiction of the court granting the petition of adoption. The court may not order compliance with the agreement absent a finding that the party seeking the enforcement participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings regarding the conflict, prior to the filing of the enforcement action, and that the enforcement is in the best interests of the child. Documentary evidence or offers of proof may serve as the basis for the court's decision regarding enforcement. No testimony or evidentiary hearing shall be required. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear and convincing evidence that the best interests of the child may be protected or advanced only by such inquiry and that the inquiry will not disturb the stability of the child's home to the detriment of the child.

(g) The court may not award monetary damages as a result of the filing of the civil action pursuant to subdivision (f) of this section.

(h) A kinship adoption agreement may be modified or terminated only if either of the following occurs:

(1) All parties, including the child if the child is 12 years of age or older at the time of the requested termination or modification, have signed a modified kinship adoption agreement and the agreement is filed with the court that granted the petition of adoption.

(2) The court finds all of the following:

(A) The termination or modification is necessary to serve the best interests of the child.

(B) There has been a substantial change of circumstances since the original agreement was executed and approved by the court.

(C) The party seeking the termination or modification has participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings prior to seeking court approval of the proposed termination or modification.

Documentary evidence or offers of proof may serve as the basis for the court's decision. No testimony or evidentiary hearing shall be required. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear and convincing evidence that the best interests of the child may be protected or advanced only by such inquiry and that the inquiry will not disturb the stability of the child's home to the detriment of the child.

(i) All costs and fees of mediation or other appropriate dispute resolution proceedings shall be borne by each party, excluding the child. All costs and fees of litigation shall be borne by the party filing the action to modify or enforce the agreement when no party has been found by the court as failing to comply with an existing kinship adoption agreement. Otherwise, a party, other than the child, found by the court as failing to comply without good cause with an existing agreement shall bear all the costs and fees of litigation.

(j) By July 1, 1998, the Judicial Council shall adopt rules of court and forms for motions to enforce, terminate, or modify kinship adoption agreements.

(k) The court shall not set aside a decree of adoption, rescind a relinquishment, or modify an order to terminate parental rights or any other prior court order because of the failure of a birth parent, adoptive parent, birth relative, or the child to comply with any or all of the original terms of, or subsequent modifications to, the kinship adoption agreement.

SEC. 6. Section 8715 of the Family Code is amended to read:

8715. The department or licensed adoption agency, whichever is a party to or joins in the petition, shall submit a full report of the facts of the case to the court. Where a petition for adoption by a relative has been filed with a kinship adoption agreement pursuant to Section 8714.7, the report shall address whether the kinship adoption agreement is in the best interests of the child who is the subject of the petition. The department may also submit a report in those cases in which a licensed adoption agency is a party or joins in the adoption petition.

SEC. 7. Section 1502 of the Health and Safety Code is amended to read:

1502. As used in this chapter:

(a) "Community care facility" means any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, incompetent persons, and abused or neglected children, and includes the following:

(1) "Residential facility" means any family home, group care facility, or similar facility determined by the director, for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual.

(2) "Adult day care facility" means any facility that provides nonmedical care to persons 18 years of age or older in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis.

(3) "Therapeutic day services facility" means any facility that provides nonmedical care, counseling, educational or vocational support, or social rehabilitation services on less than a 24-hour basis to persons under 18 years of age who would otherwise be placed in foster care or who are returning to families from foster care. Program standards for these facilities shall be developed by the department, pursuant to Section 1530, in consultation with therapeutic day services and foster care providers.

(4) "Foster family agency" means any organization engaged in the recruiting, certifying, and training of, and providing professional support to, foster parents, or in finding homes or other places for placement of children for temporary or permanent care who require that level of care as an alternative to a group home. Private foster family agencies shall be organized and operated on a nonprofit basis.

(5) "Foster family home" means any residential facility providing 24-hour care for six or fewer foster children that is owned, leased, or rented and is the residence of the foster parent or parents, including their family, in whose care the foster children have been placed. The placement may be by a public or private child placement agency or by a court order, or by voluntary placement by a parent, parents, or guardian. It also means a foster family home described in Section 1505.2.

(6) "Small family home" means any residential facility, in the licensee's family residence, that provides 24-hour care for six or fewer foster children who have mental disorders or developmental or physical disabilities and who require special care and supervision as a result of their disabilities. A small family home may accept children with special health care needs, pursuant to subdivision (a) of Section 17710 of the Welfare and Institutions Code. In addition to placing children with special health care needs, the department may approve placement of children without special health care needs, up to the licensed capacity.

(7) "Social rehabilitation facility" means any residential facility that provides social rehabilitation services for no longer than 18 months in a group setting to adults recovering from mental illness who temporarily need assistance, guidance, or counseling. Program components shall be subject to program standards pursuant to Article 1 (commencing with Section 5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and Institutions Code.

(8) "Community treatment facility" means any residential facility that provides mental health treatment services to children in a group setting and that has the capacity to provide secure containment. Program components shall be subject to program standards developed and enforced by the State Department of Mental Health pursuant to Section 4094 of the Welfare and Institutions Code.

Nothing in this section shall be construed to prohibit or discourage placement of persons who have mental or physical disabilities into any category of community care facility that meets the needs of the

individual placed, if the placement is consistent with the licensing regulations of the department.

(9) "Full-service adoption agency" means any licensed entity engaged in the business of providing adoption services, that does all of the following:

(A) Assumes care, custody, and control of a child through relinquishment of the child to the agency or involuntary termination of parental rights to the child.

(B) Assesses the birth parents, prospective adoptive parents, or child.

(C) Places children for adoption.

(D) Supervises adoptive placements.

Private full-service adoption agencies shall be organized and operated on a nonprofit basis.

(10) "Noncustodial adoption agency" means any licensed entity engaged in the business of providing adoption services, that does all of the following:

(A) Assesses the prospective adoptive parents.

(B) Cooperatively matches children freed for adoption, who are under the care, custody, and control of a licensed adoption agency, for adoption, with assessed and approved adoptive applicants.

(C) Cooperatively supervises adoptive placements with a full-service adoptive agency, but does not disrupt a placement or remove a child from a placement.

Private noncustodial adoption agencies shall be organized and operated on a nonprofit basis.

(11) "Transitional shelter care facility" means any group care facility that provides for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual. Program components shall be subject to program standards developed by the State Department of Social Services pursuant to Section 1502.3.

(b) "Department" or "state department" means the State Department of Social Services.

(c) "Director" means the Director of Social Services.

SEC. 8. Section 1505 of the Health and Safety Code is amended to read:

1505. This chapter does not apply to any of the following:

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

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

(c) Any juvenile placement facility approved by the California Youth Authority or any juvenile hall operated by a county.

(d) Any place in which a juvenile is judicially placed pursuant to subdivision (a) of Section 727 of the Welfare and Institutions Code.

(e) Any child day care facility, as defined in Section 1596.750.

(f) Any facility conducted by and for the adherents of any well-recognized church or religious denomination for the purpose of

providing facilities for the care or treatment of the sick who depend upon prayer or spiritual means for healing in the practice of the religion of the church or denomination.

(g) Any school dormitory or similar facility determined by the department.

(h) Any house, institution, hotel, homeless shelter, or other similar place that supplies board and room only, or room only, or board only, provided that no resident thereof requires any element of care as determined by the director.

(i) Recovery houses or other similar facilities providing group living arrangements for persons recovering from alcoholism or drug addiction where the facility provides no care or supervision.

(j) Any alcoholism or drug abuse recovery or treatment facility as defined by Section 11834.11.

(k) Any arrangement for the receiving and care of persons by a relative or any arrangement for the receiving and care of persons from only one family by a close friend of the parent, guardian, or conservator, if the arrangement is not for financial profit and occurs only occasionally and irregularly, as defined by regulations of the state department. For purposes of this chapter, arrangements for the receiving and care of persons by a relative shall include relatives of the child or relatives of the child's half sibling, for the purpose of keeping sibling groups together.

(*l*) Any supported living arrangement for individuals with developmental disabilities as defined in Section 4689 of the Welfare and Institutions Code.

(m) (1) Any family home agency or family home, as defined in Section 4689.1 of the Welfare and Institutions Code, that is vendored by the State Department of Developmental Services and that does either of the following:

(A) As a family home approved by a family home agency, provides 24-hour care for one or two adults with developmental disabilities in the residence of the family home provider or providers and the family home provider or providers' family, and the provider is not licensed by the State Department of Social Services or the State Department of Health Services or certified by a licensee of the State Department of Social Services or the State Department of Health Services.

(B) As a family home agency, engages in recruiting, approving, and providing support to family homes.

(2) No part of this subdivision shall be construed as establishing by implication either a family home agency or family home licensing category.

(n) Any facility in which only Indian children who are eligible under the federal Indian Child Welfare Act, Chapter 21 (commencing with Section 1901) of Title 25 of the United States Code are placed and that is one of the following:

(1) An extended family member of the Indian child, as defined in Section 1903 of Title 25 of the United States Code.

(2) A foster home that is licensed, approved, or specified by the Indian child's tribe pursuant to Section 1915 of Title 25 of the United States Code.

(o) Any similar facility determined by the director.

SEC. 9. Section 1505.2 is added to the Health and Safety Code, to read:

1505.2. A licensing agency may authorize a foster family home to provide 24-hour care for up to eight foster children, for the purpose of placing siblings or half siblings together in foster care. This authorization may be granted only if all of the following conditions are met:

(A) The foster family home is not a specialized foster care home as defined in subdivision (i) of Section 17710 of the Welfare and Institutions Code.

(B) The home is sufficient in size to accommodate the needs of all children in the home.

(C) For each child to be placed, the child's placement social worker has determined that the child's needs will be met and has documented that determination.

The licensing agency may authorize a foster family home to provide 24-hour care for more than eight children only if the foster family home specializes in the care of sibling groups, that placement is solely for the purpose of placing together one sibling group that exceeds eight children, and all of the above listed conditions are met.

SEC. 10. Section 309 of the Welfare and Institutions Code is amended to read:

309. (a) Upon delivery to the probation officer of a minor who has been taken into temporary custody under this article, the probation officer shall immediately investigate the circumstances of the minor and the facts surrounding the minor's being taken into custody and attempt to maintain the minor with the minor's family through the provision of services. The probation officer shall immediately release the minor to the custody of the minor's parent, guardian, or responsible relative unless one or more of the following conditions exist:

(1) The minor has no parent, guardian, or responsible relative; or the minor's parent, guardian, or responsible relative is not willing to provide care for the minor.

(2) Continued detention of the minor is a matter of immediate and urgent necessity for the protection of the minor and there are no reasonable means by which the minor can be protected in his or her home or the home of a responsible relative.

(3) There is substantial evidence that a parent, guardian, or custodian of the minor is likely to flee the jurisdiction of the court.

(4) The minor has left a placement in which he or she was placed by the juvenile court.

(b) In any case in which there is reasonable cause for believing that a minor who is under the care of a physician or surgeon or a hospital, clinic, or other medical facility and cannot be immediately moved is a person described in Section 300, the minor shall be deemed to have been taken into temporary custody and delivered to the probation officer for the purposes of this chapter while the minor is at the office of the physician or surgeon or the medical facility.

(c) If the minor is not released to his or her parent or guardian, the minor shall be deemed detained for purposes of this chapter.

(d) If an able and willing relative, as defined in Section 319, is available and requests temporary placement of the child pending the detention hearing, the social worker shall initiate an emergency assessment of the relative's suitability, which shall include an in-home visit to assess the safety of the home and the ability of the relative to care for the child on a temporary basis, and a consideration of the results of a criminal records check and allegations of prior child abuse or neglect concerning the relative and other adults in the home. The results of the assessment shall be provided to the court in the social worker's report as required by Section 319.

SEC. 11. Section 316.2 is added to the Welfare and Institutions Code, to read:

316.2. (a) At the detention hearing, or as soon thereafter as practicable, the court shall inquire of the mother and any other appropriate person as to the identity and address of all presumed or alleged fathers. The presence at the hearing of a man claiming to be the father shall not relieve the court of its duty of inquiry. The inquiry may include all of the following:

(1) Whether a judgment of paternity already exists.

(2) Whether the mother was married or believed she was married at the time of conception of the child or at any time thereafter.

(3) Whether the mother was cohabiting with a man at the time of conception or birth of the child.

(4) Whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy.

(5) Whether any man has formally or informally acknowledged or declared his possible paternity of the child.

(6) Whether paternity tests have been administered and the results, if any.

(b) If, after the court inquiry, one or more men are identified as an alleged father, each alleged father shall be provided notice at his last and usual place of abode by certified mail return receipt requested alleging that he is or could be the father of the child. The notice shall state that the child is the subject of proceedings under Section 300 and that the proceedings could result in the termination of parental rights and adoption of the child. Judicial Council form Paternity-Waiver of Rights (JV-505) shall be included with the notice. Nothing in this section shall preclude a court from

terminating a father's parental rights even if he appears at the hearing and files an action under Section 7630 or 7631 of the Family Code.

(c) The court may determine that the failure of an alleged father to return the certified mail receipt is not good cause to continue a hearing pursuant to Section 355, 358, 360, 366.21, or 366.22.

(d) If a man appears in the dependency action and files an action under Section 7630 or 7631 of the Family Code, the court shall determine if he is the father.

(e) After a petition has been filed to declare a child a dependent of the court, and until the time that the petition is dismissed, dependency is terminated, or parental rights are terminated pursuant to Section 366.26 or proceedings are commenced under Part 4 (commencing with Section 7800) of Division 12 of the Family Code, the juvenile court which has jurisdiction of the dependency action shall have exclusive jurisdiction to hear an action filed under Section 7630 or 7631 of the Family Code.

SEC. 12. Section 319 of the Welfare and Institutions Code is amended to read:

319. At the initial petition hearing the court shall examine the minor's parents, guardians, or other persons having relevant knowledge and hear the relevant evidence as the minor, the minor's parents or guardians, the petitioner, or their counsel desires to present. The court may examine the minor, as provided in Section 350.

The probation officer shall report to the court on the reasons why the minor has been removed from the parent's custody; the need, if any, for continued detention; on the available services and the referral methods to those services which could facilitate the return of the minor to the custody of the minor's parents or guardians; and whether there are any relatives who are able and willing to take temporary custody of the minor. The court shall order the release of the minor from custody unless a prima facie showing has been made that the minor comes within Section 300 and any of the following circumstances exist:

(a) There is a substantial danger to the physical health of the minor or the minor is suffering severe emotional damage, and there are no reasonable means by which the minor's physical or emotional health may be protected without removing the minor from the parents' or guardians' physical custody.

(b) There is substantial evidence that a parent, guardian, or custodian of the minor is likely to flee the jurisdiction of the court.

(c) The minor has left a placement in which he or she was placed by the juvenile court.

(d) The minor indicates an unwillingness to return home, if the minor has been physically or sexually abused by a person residing in the home.

The court shall also make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the minor from his or her home, pursuant to subdivision (b) of Section 306, and whether there are available services which would prevent the need for further detention. Services to be considered for purposes of making this determination are case management, counseling, emergency shelter care, emergency in-home caretakers, out-of-home respite care, teaching and demonstrating homemakers, parenting training, transportation, and any other child welfare services authorized by the State Department of Social Services pursuant to Chapter 5 (commencing with Section 16500) of Part 4 of Division 9. The court shall also review whether the social worker has considered whether a referral to public assistance services pursuant to Chapter 2 (commencing with Section 11200) of Part 3, Chapter 7 (commencing with Section 14000) of Part 3, Chapter 1 (commencing with Section 17000) of Part 5, and Chapter 10 (commencing with Section 18900) of Part 6, of Division 9 would have eliminated the need to take temporary custody of the minor or would prevent the need for further detention. If the minor can be returned to the custody of his or her parent or guardian through the provision of those services, the court shall place the minor with his or her parent or guardian and order that the services shall be provided. If the minor cannot be returned to the custody of his or her parent or guardian, the court shall determine if there is a relative who is able and willing to care for the child. Where the first contact with the family has occurred during an emergency situation in which the child could not safely remain at home, even with reasonable services being provided, the court shall make a finding that the lack of preplacement preventive efforts were reasonable. Whenever a court orders a minor detained, the court shall state the facts on which the decision is based, shall specify why the initial removal was necessary, and shall order services to be provided as soon as possible to reunify the minor and his or her family if appropriate.

When the minor is not released from custody the court may order that the minor shall be placed in the suitable home of a relative or in an emergency shelter or other suitable licensed place or a place exempt from licensure designated by the juvenile court or in an appropriate certified family home whose license is pending and all the prelicense requirements for such a placement have been met as set forth in subdivision (e) of Section 361.2 for a period not to exceed 15 judicial days.

As used in this section, "relative" means an adult who is related to the child or child's half sibling by blood or affinity, including all relatives 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. However, only the following relatives shall be given preferential consideration

for placement of the child: an adult who is a grandparent, aunt, uncle, or a sibling of the child.

The court shall consider the recommendations of the social worker based on the emergency assessment of the relative's suitability, including the results of a criminal records check and prior child abuse allegations, if any, prior to ordering that the child be placed with a relative. The social worker shall initiate the assessment pursuant to Section 361.3 of any relative to be considered for continuing placement.

SEC. 13. Section 355 of the Welfare and Institutions Code is amended to read:

355. (a) At the jurisdictional hearing, the court shall first consider only the question whether the minor is a person described by Section 300. Any legally admissible evidence that is relevant to the circumstances or acts that are alleged to bring the minor within the jurisdiction of the juvenile court is admissible and may be received in evidence. Proof by a preponderance of evidence must be adduced to support a finding that the minor is a person described by Section 300. Objections that could have been made to evidence introduced shall be deemed to have been made by any parent or guardian who is present at the hearing and unrepresented by counsel, unless the court finds that the parent or guardian has made a knowing and intelligent waiver of the right to counsel. Objections that could have been made to evidence introduced shall be deemed to have been made by any unrepresented child.

(b) A social study prepared by the petitioning agency, and hearsay evidence contained in it, is admissible and constitutes competent evidence upon which a finding of jurisdiction pursuant to Section 300 may be based, to the extent allowed by subdivisions (c) and (d).

(1) For the purposes of this section, "social study" means any written report furnished to the juvenile court and to all parties or their counsel by the county probation or welfare department in any matter involving the custody, status, or welfare of a minor in a dependency proceeding pursuant to Article 6 (commencing with Section 300) to 12 (commencing with Section 385), inclusive of Chapter 2 of Division 2.

(2) The preparer of the social study shall be made available for cross-examination upon a timely request by any party. The court may deem the preparer available for cross-examination if it determines that the preparer is on telephone standby and can be present in court within a reasonable time of the request.

(3) The court may grant a reasonable continuance not to exceed 10 days upon request by any party if the social study is not provided to the parties or their counsel within a reasonable time before the hearing.

(c) (1) If any party to the jurisdictional hearing raises a timely objection to the admission of specific hearsay evidence contained in a social study, the specific hearsay evidence shall not be sufficient by

itself to support a jurisdictional finding or any ultimate fact upon which a jurisdictional finding is based, unless the petitioner establishes one or more of the following exceptions:

(A) The hearsay evidence would be admissible in any civil or criminal proceeding under any statutory or decisional exception to the prohibition against hearsay.

(B) The hearsay declarant is a minor under the age of 12 years who is the subject of the jurisdictional hearing. However, the hearsay statement of a minor under the age of 12 years shall not be admissible if the objecting party establishes that the statement is unreliable because it was the product of fraud, deceit, or undue influence.

(C) The hearsay declarant is a peace officer as defined by Chapter 4.5 (commencing with Section 830) of Part 2 of Title 3 of the Penal Code, a health practitioner as defined by Section 11165.8 of the Penal Code, a social worker licensed pursuant to Chapter 14 (commencing with Section 4996) of Division 2 of the Business and Professions Code, or a teacher who holds a credential pursuant to Chapter 2 (commencing with Section 44200) of Part 24 of Division 3 of Title 2 of the Education Code. For the purpose of this subdivision, evidence in a declaration is admissible only to the extent that it would otherwise be admissible under this section or if the declarant were present and testifying in court.

(D) The hearsay declarant is available for cross-examination. For purposes of this section, the court may deem a witness available for cross-examination if it determines that the witness is on telephone standby and can be present in court within a reasonable time of a request to examine the witness.

(2) For purposes of this subdivision, an objection is timely if it identifies with reasonable specificity the disputed hearsay evidence and it gives the petitioner a reasonable period of time to meet the objection prior to a contested hearing.

(d) This section shall not be construed to limit the right of any party to the jurisdictional hearing to subpoena a witness whose statement is contained in the social study or to introduce admissible evidence relevant to the weight of the hearsay evidence or the credibility of the hearsay declarant.

SEC. 14. Section 358.1 of the Welfare and Institutions Code is amended to read:

358.1. Each social study or evaluation made by a probation officer or child advocate appointed by the court, required to be received in evidence pursuant to Section 358, shall include, but not be limited to, a factual discussion of each of the following subjects:

(a) Whether the county welfare department or probation officer has considered child protective services, as defined in Chapter 5 (commencing with Section 16500) of Part 4 of Division 9, as a possible solution to the problems at hand, and has offered these services to qualified parents if appropriate under the circumstances.

(b) What plan, if any, for return of the child to his or her parents and for achieving legal permanence for the child if efforts to reunify fail, is recommended to the court by the county welfare department or probation officer.

(c) Whether the best interests of the child will be served by granting reasonable visitation rights with the child to his or her grandparents, in order to maintain and strengthen the child's family relationships.

(d) Whether the subject child appears to be a person who is eligible to be considered for further court action to free the child from parental custody and control.

(e) Whether the parent has been advised of his or her option to participate in adoption planning and to voluntarily relinquish the child for adoption if an adoption agency is willing to accept the relinquishment.

(f) The appropriateness of any relative placement pursuant to Section 361.3; however, this consideration shall not be cause for continuance of the dispositional hearing.

SEC. 15. Section 361 of the Welfare and Institutions Code is amended to read:

361. (a) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations. Any limitation on the right of the parent or guardian to make educational decisions for the child shall be specifically addressed in the court order. The limitations shall not exceed those necessary to protect the child.

(b) Nothing in subdivision (a) shall be construed to limit the ability of a parent to voluntarily relinquish his or her child to the State Department of Social Services or to a licensed county adoption agency at any time while the child is a dependent child of the juvenile court if the department or agency is willing to accept the relinquishment.

(c) No dependent child shall be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated unless the juvenile court finds clear and convincing evidence of any of the following:

(1) There is a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor or would be if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parents' or guardians' physical custody. The fact that a minor has been adjudicated a dependent child of the court pursuant to subdivision (e) of Section 300 shall constitute prima facie evidence that the minor cannot be safely left in the custody of the parent or guardian with whom the minor resided at the time of injury. The court shall consider, as a reasonable

means to protect the minor, the option of removing an offending parent or guardian from the home. The court shall also consider, as a reasonable means to protect the minor, allowing a nonoffending parent or guardian to retain custody as long as that parent or guardian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm.

(2) The parent or guardian of the minor is unwilling to have physical custody of the minor, and the parent or guardian has been notified that if the minor remains out of their physical custody for the period specified in Section 366.25 or 366.26, the minor may be declared permanently free from their custody and control.

(3) The minor is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, and there are no reasonable means by which the minor's emotional health may be protected without removing the minor from the physical custody of his or her parent or guardian.

(4) The minor or a sibling of the minor has been sexually abused, or is deemed to be at substantial risk of being sexually abused, by a parent, guardian, or member of his or her household, or other person known to his or her parent, and there are no reasonable means by which the minor can be protected from further sexual abuse or a substantial risk of sexual abuse without removing the minor from his or her parent or guardian, or the minor does not wish to return to his or her parent or guardian.

(5) The minor has been left without any provision for his or her support, or a parent who has been incarcerated or institutionalized cannot arrange for the care of the minor, or a relative or other adult custodian with whom the child has been left by the parent is unwilling or unable to provide care or support for the child and the whereabouts of the parent is unknown and reasonable efforts to locate him or her have been unsuccessful.

(d) The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home or, if the minor is removed for one of the reasons stated in paragraph (5) of subdivision (c), whether it was reasonable under the circumstances not to make any of those efforts. The court shall state the facts on which the decision to remove the minor is based.

(e) The court shall make all of the findings required by subdivision (a) of Section 366 in either of the following circumstances:

(1) The minor has been taken from the custody of his or her parent or guardian and has been living in an out-of-home placement pursuant to Section 319.

(2) The minor has been living in a voluntary out-of-home placement pursuant to Section 16507.4.

SEC. 16. Section 361.3 of the Welfare and Institutions Code is amended to read:

361.3. (a) In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative. In determining whether placement with a relative is appropriate, the county social worker and court shall consider, but shall not be limited to, consideration of all the following factors:

(1) The best interests of the child, including special physical, psychological, educational, medical, or emotional needs.

(2) The wishes of the parent, the relative, and child, if appropriate.

(3) The provisions of Part 6 (commencing with Section 7950) of Division 12 of the Family Code regarding relative placement.

(4) Placement of siblings and half-siblings in the same home, if such a placement is found to be in the best interests of each of the children as provided in Section 16002.

(5) The good moral character of the relative and any other adult living in the home, including whether any individual residing in the home has a prior history of violent criminal acts or has been responsible for acts of child abuse or neglect. However, this paragraph shall not be construed to provide independent grounds for access to the child abuse central index.

(6) The nature and duration of the relationship between the child and the relative, and the relative's desire to care for the child.

(7) The ability of the relative to do the following:

(A) Provide a safe, secure, and stable environment for the child.

(B) Exercise proper and effective care and control of the child.

(C) Provide a home and the necessities of life for the child.

(D) Protect the child from his or her parents.

(E) Facilitate court-ordered reunification efforts with the parents.

(F) Facilitate visitation with the child's other relatives.

(G) Facilitate implementation of all elements of the case plan.

(H) Provide legal permanence for the child if reunification fails.

However, any finding made with respect to the factor considered pursuant to this subparagraph and pursuant to subparagraph (G) shall not be the sole basis for precluding preferential placement with a relative.

(I) Arrange for appropriate and safe child care, as necessary.

(8) The safety of the relative's home. For purposes of this paragraph, the county social worker shall conduct a direct assessment of the safety of the relative's home. The information obtained as a result of this assessment shall be documented by the county social worker in the child's case record.

In this regard, the Legislature declares that a physical disability, such as blindness or deafness, is no bar to the raising of children, and a county social worker's determination as to the ability of a disabled relative to exercise care and control should center upon whether the

relative's disability prevents him or her from exercising care and control. The court shall order the parent to disclose to the county social worker the names, residences, and any other known identifying information of any maternal or paternal relatives of the child. This inquiry shall not be construed, however, to guarantee that the minor will be placed with any person so identified. The county social worker shall initially contact the relatives given preferential consideration for placement to determine if they desire the child to be placed with them. Those desiring placement shall be assessed according to the factors enumerated in this subdivision. The county social worker shall document these efforts in the social study prepared pursuant to Section 358.1. The court shall authorize the county social worker, while assessing these relatives for the possibility of placement, to disclose to the relative, as appropriate, the fact that the child is in custody, the alleged reasons for the custody, and the projected likely date for the child's return home or placement for adoption or legal guardianship. However, this investigation shall not be construed as good cause for continuance of the dispositional hearing conducted pursuant to Section 358.

(b) In any case in which more than one appropriate relative requests preferential consideration pursuant to this section, each relative shall be considered under the factors enumerated in subdivision (a).

(c) For purposes of this section:

(1) "Preferential consideration" means that the relative seeking placement shall be the first placement to be considered and investigated.

(2) "Relative" means an adult who is related to the child or the child's half sibling by blood or affinity, including all relatives whose status is preceded by the words "step," "great," "great-great" or "grand" or the spouse of any such person even if the marriage has been terminated by death or dissolution. However, only the following relatives shall be given preferential consideration for the placement of the child: an adult who is a grandparent, aunt, uncle, or sibling.

(d) Subsequent to the hearing conducted pursuant to Section 358, whenever a new placement of the minor must be made, consideration for placement shall again be given as described in this section to relatives who have not been found to be unsuitable and who will fulfill the minor's reunification or permanent plan requirements. In addition to the factors described in subdivision (a), the county social worker shall consider whether the relative has established and maintained a relationship with the minor.

(e) If the court does not place the child with a relative who has been considered for placement pursuant to this section, the court shall state for the record the reasons placement with that relative was denied.

SEC. 17. Section 361.5 of the Welfare and Institutions Code, as amended by Section 2.5 of Chapter 1083 of the Statutes of 1996, is amended to read:

361.5. (a) Except as provided in subdivision (b) of this section or when the parent has voluntarily relinquished the minor and the relinquishment has been filed with the State Department of Social Services or, upon the establishment of an order of guardianship pursuant to Section 360, whenever a minor is removed from a parent's or guardian's custody, the juvenile court shall order the probation officer to provide child welfare services to the minor and the minor's mother and statutorily presumed father, or guardians. Upon a finding and declaration of paternity by the juvenile court or proof of a prior declaration of paternity by any court of competent jurisdiction, the juvenile court may order services for the minor and the biological father, if the court determines that the services will benefit the child. Child welfare services, when provided, shall be provided as follows:

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

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

However, court-ordered services may be extended up to a maximum time period not to exceed 18 months if it can be shown that the objectives of the service plan can be achieved within the extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the minor will be returned to the physical custody of his or her parent or guardian within the extended time period or that reasonable services have not been provided to the parent or guardian. If the court extends the time period, the court shall specify the factual basis for its conclusion that there is a substantial probability that the minor will be returned to the physical custody of his or her parent or guardian within the extended time period. The court also shall make findings pursuant to subdivision (a) of Section 366 and subdivision (e) of Section 358.1. When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the minor. Physical custody of the minor by the parents or guardians during the 18-month period shall not serve to interrupt the running of the period. If at the end of the 18-month period, a minor cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the minor clearly desires contact with the parent or guardian, the

court shall take the child's desire into account in devising a permanency plan.

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

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

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

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

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

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

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

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

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

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse

or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the minor, or a sibling or half-sibling of the minor, or between the minor or a sibling or half-sibling of the minor, and another person or animal with the actual or implied consent of the parent or guardian, or the penetration or manipulation of the minor's, sibling's, or half-sibling's genital organs or rectum by any animate or inanimate object, for the sexual gratification of the parent or guardian, or for the sexual gratification of another person with the actual or implied consent of the parent or guardian.

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

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

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

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

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

the problems that led to removal of the sibling or half-sibling of that minor from that parent or guardian.

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

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

(13) That the parent or guardian of the minor has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the minor returned to or placed in his or her custody and does not wish to receive family maintenance or reunification services.

The parent or guardian shall be represented by counsel and shall execute a waiver of services form to be adopted by the Judicial Council. The court shall advise the parent or guardian of any right to services and of the possible consequences of a waiver of services, including the termination of parental rights and placement of the child for adoption. The court shall not accept the waiver of services unless it states on the record its finding that the parent or guardian has knowingly and intelligently waived the right to services.

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

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12), or (13) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interests of the minor.

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

minor and advise the court whether there are circumstances which indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the minor.

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

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

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

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

(B) Transportation services, where appropriate.

(C) Visitation services, where appropriate.

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

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

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the

notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the minor pursuant to Section 2625 of the Penal Code.

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

(f) If a court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), or (13) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall conduct a hearing pursuant to Section 366.25 or 366.26 within 120 days of the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a). The court may continue to permit the parent to visit the minor unless it finds that visitation would be detrimental to the minor.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.25 or 366.26 it shall direct the agency supervising the minor and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment regarding the likelihood that the minor will be adopted if parental rights are terminated. The assessment shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the minor and his or her parents since the time of placement.

(3) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status and an analysis of whether any of the minor's characteristics would make it difficult to find a person willing to adopt the minor.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the minor concerning placement and the adoption or guardianship, unless the minor's age or physical,

emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

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

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

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

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

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

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

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

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

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

SEC. 18. Section 361.5 of the Welfare and Institutions Code, as added by Section 2.7 of Chapter 1083 of the Statutes of 1996, is amended to read:

361.5. (a) Except as provided in subdivision (b) of this section or when the parent has voluntarily relinquished the minor and the relinquishment has been filed with the State Department of Social Services, or upon the establishment of an order of guardianship pursuant to Section 360, whenever a minor is removed from a parent's or guardian's custody, the juvenile court shall order the probation officer to provide child welfare services to the minor and the minor's mother and statutorily presumed father, or guardians. Upon a finding and declaration of paternity by the juvenile court or proof of a prior declaration of paternity by any court of competent jurisdiction, the juvenile court may order services for the minor and the biological father, if the court determines that the services will benefit the child. Child welfare services, when provided, shall be provided as follows:

(1) For a minor who, on the date of initial removal from the physical custody of his or her parent or guardian, was three years of

age or older, court-ordered services shall not exceed a period of 12 months.

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

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

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

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

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

(1) That the whereabouts of the parent or guardian is unknown. A finding pursuant to this paragraph shall be supported by an affidavit or by proof that a reasonably diligent search has failed to

locate the parent or guardian. The posting or publication of notices is not required in that search.

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) That the parent or guardian of the minor has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the minor returned to or placed in his or her custody and does not wish to receive family maintenance or reunification services.

The parent or guardian shall be represented by counsel and shall execute a waiver of services form to be adopted by the Judicial

Council. The court shall advise the parent or guardian of any right to services and of the possible consequences of a waiver of services, including the termination of parental rights and placement of the child for adoption. The court shall not accept the waiver of services unless it states on the record its finding that the parent or guardian has knowingly and intelligently waived the right to services.

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

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12), or (13) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the minor.

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

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

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

However, the time limits specified in subdivision (a) and Section 366.25 are not tolled by the parent's absence.

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

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

(B) Transportation services, where appropriate.

(C) Visitation services, where appropriate.

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

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

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

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

(f) If a court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), or (13) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall conduct a hearing pursuant to Section 366.25 or 366.26 within 120 days of the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a). The court may continue to

permit the parent to visit the minor unless it finds that visitation would be detrimental to the minor.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.25 or 366.26, it shall direct the agency supervising the minor and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment which shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the minor and his or her parents since the time of placement.

(3) An evaluation of the minor's medical, development, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the minor concerning placement and the adoption or guardianship, unless the minor's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the minor will be adopted if parental rights are terminated.

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

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

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

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

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

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

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

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

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

SEC. 19. Section 366 of the Welfare and Institutions Code is amended to read:

366. (a) The status of every dependent child in foster care shall be reviewed periodically as determined by the court but no less frequently than once every six months, as calculated from the date of the original dispositional hearing, until the hearing described in Section 366.25 or 366.26 is completed. The court shall determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, the continuing need to suspend sibling interaction, if applicable, pursuant to subdivision (c) of Section 16002, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and shall project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship.

(b) Subsequent to the hearing periodic reviews of each child in foster care shall be conducted pursuant to the requirements of Sections 366.3 and 16503.

(c) If the child has been placed out-of-state, each review described in subdivision (a) and any reviews conducted pursuant to Sections 366.3 and 16503 shall also address whether the out-of-state placement continues to be the most appropriate placement selection and in the best interests of the child.

SEC. 20. Section 366.21 of the Welfare and Institutions Code, as amended by Section 6.9 of Chapter 1084 of the Statutes of 1996, is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Section 366.23 and subdivision (a) of Section 366.3, notice of the hearing shall be mailed by the probation officer to the same persons as in the original proceeding, to the minor's parent or guardian, to the foster parents, community care facility, or foster family agency having physical custody of the minor in the case of a minor removed from the physical custody of his or her parent or guardian, and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued. Service of a copy of the notice

personally or by certified mail return receipt requested, or any other form of actual notice is equivalent to service by first-class mail.

The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the minor being recommended by the supervising agency. The notice to the foster parent shall indicate that the foster parent may attend all hearings or may submit any information he or she deems relevant to the court in writing.

(c) At least 10 calendar days prior to the hearing the probation officer shall file a supplemental report with the court regarding the services provided or offered to the parent or guardian to enable them to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, the progress made, and, where relevant, the prognosis for return of the minor to the physical custody of his or her parent or guardian, and make his or her recommendation for disposition. If the recommendation is not to return the minor to a parent or guardian, the report shall specify why the return of the minor would be detrimental to the minor. The probation officer shall provide the parent or guardian with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a minor removed from the physical custody of his or her parent or guardian, the probation officer shall provide a summary of his or her recommendation for disposition to the counsel for the minor, any court-appointed child advocate, foster parents, community care facility, or foster family agency having the physical custody of the minor at least 10 calendar days before the hearing.

(d) Prior to any hearing involving a minor in the physical custody of a community care facility or foster family agency that may result in the return of the minor to the physical custody of his or her parent or guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to such a hearing involving a minor in the physical custody of a foster parent, the foster parent may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the minor to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its

determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she cooperated and availed himself or herself of services provided.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(C) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the minor is returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and where relevant, shall order any additional services reasonably believed to facilitate the return of the minor to the custody of his or her parent or guardian. The court shall also inform the parent or guardian that if the minor cannot be returned home by the next review hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the minor was under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the minor, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case.

If the minor was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the minor, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the minor had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may

terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (a) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services. If the minor is not returned to his or her parent or guardian, the court shall determine whether reasonable services have been provided or offered to the parent or guardian which were designed to aid the parent or guardian in overcoming the problems which led to the initial removal and the continued custody of the minor. The court shall order that those services be initiated, continued, or terminated.

(f) At the review hearing held 12 months after the initial dispositional hearing, the court shall order the return of the minor to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The court shall also determine whether reasonable services have been provided or offered to the parent or guardian which were designed to aid the parent or guardian to overcome the problems that led to the initial removal and continued custody of the minor. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(C) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the minor is not returned to a parent or guardian, the court shall specify

the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and a minor is not returned to the custody of a parent or guardian at the hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for another review hearing, provided that the hearing shall occur within 18 months of the date the minor was originally taken from the physical custody of his or her parent or guardian. The court shall continue the case only if it finds that there is a substantial probability that the minor will be returned to the physical custody of his or her parent or guardian within six months or that reasonable services have not been provided to the parent or guardian. The court shall inform the parent or guardian that if the minor cannot be returned home by the next review hearing, a permanent plan shall be developed at that hearing. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or guardian.

(2) Order that the minor remain in long-term foster care, if the court finds by clear and convincing evidence, based upon the evidence already presented to it, that the minor is not a proper subject for adoption and has no one willing to accept legal guardianship.

(3) Order that a hearing be held within 120 days, pursuant to Section 366.26, if there is clear and convincing evidence that reasonable services have been provided or offered to the parents.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(C) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent. The court shall continue to permit the parent to visit the minor pending the hearing unless it finds that visitation would be detrimental to the minor.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department

of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment regarding the likelihood that the minor will be adopted if parental rights are terminated. The assessment shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the minor and his or her parents since the time of placement.

(3) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status and an analysis of whether any of the minor's characteristics would make it difficult to find a person willing to adopt the minor.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the minor concerning placement and the adoption or guardianship, unless the minor's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(j) This section shall apply to minors made dependents of the court pursuant to subdivision (c) of Section 360 on or after January 1, 1989.

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

SEC. 21. Section 366.21 of the Welfare and Institutions Code, as amended by Section 7.9 of Chapter 1084 of the Statutes of 1996, is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Section 366.23 and subdivision (a) of Section 366.3, notice of the hearing shall be mailed by the probation officer to the same persons as in the original proceeding, to the minor's parent or guardian, to the foster parents, community care facility, or foster family agency having physical custody of the minor in the case of a minor removed from the physical custody of his or her parent or guardian, and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the

person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued. Service of a copy of the notice personally or by certified mail return receipt requested, or any other form of actual notice is equivalent to service by first-class mail.

The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the minor being recommended by the supervising agency. The notice to the foster parent shall indicate that the foster parent may attend all hearings or may submit any information he or she deems relevant to the court in writing.

(c) At least 10 calendar days prior to the hearing the probation officer shall file a supplemental report with the court regarding the services provided or offered to the parent or guardian to enable them to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, the progress made, and, where relevant, the prognosis for return of the minor to the physical custody of his or her parent or guardian, and make his or her recommendation for disposition. If the recommendation is not to return the minor to a parent or guardian, the report shall specify why the return of the minor would be detrimental to the minor. The probation officer shall provide the parent or guardian with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a minor removed from the physical custody of his or her parent or guardian, the probation officer shall provide a summary of his or her recommendation for disposition to the counsel for the minor, any court-appointed child advocate, foster parents, community care facility, or foster family agency having the physical custody of the minor at least 10 calendar days before the hearing.

(d) Prior to any hearing involving a minor in the physical custody of a community care facility or foster family agency that may result in the return of the minor to the physical custody of his or her parent or guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to such a hearing involving a minor in the physical custody of a foster parent, the foster parent may file with the court a report containing its recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the minor to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden

of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(C) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the minor is returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and where relevant, shall order any additional services reasonably believed to facilitate the return of the minor to the custody of his or her parent or guardian. The court shall also inform the parent or guardian that if the minor cannot be returned home by the next review hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the minor was under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the minor, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case.

If the minor was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the minor, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the minor had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (a) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the minor is not returned to his or her parent or guardian, the court shall determine whether reasonable services have been provided or offered to the parent or guardian which were designed to aid the parent or guardian in overcoming the problems which led to the initial removal and the continued custody of the minor. The court shall order that those services be initiated, continued, or terminated.

(f) At the review hearing held 12 months after the initial dispositional hearing, the court shall order the return of the minor to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(C) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the minor is not returned to a parent or guardian, the court shall specify

the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and a minor is not returned to the custody of a parent or guardian at the hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for another review hearing, provided that the hearing shall occur within 18 months of the date the minor was originally taken from the physical custody of his or her parent or guardian. The court shall continue the case only if it finds that there is a substantial probability that the minor will be returned to the physical custody of his or her parent or guardian within six months or that reasonable services have not been provided to the parent or guardian. The court shall inform the parent or guardian that if the minor cannot be returned home by the next review hearing, a permanent plan shall be developed at that hearing. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or guardian.

(2) Order that the minor remain in long-term foster care, if the court finds by clear and convincing evidence, based upon the evidence already presented to it, that the minor is not a proper subject for adoption and has no one willing to accept legal guardianship.

(3) Order that a hearing be held within 120 days, pursuant to Section 366.26, if there is clear and convincing evidence that reasonable services have been provided or offered to the parents.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(C) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent. The court shall continue to permit the parent to visit the minor pending the hearing unless it finds that visitation would be detrimental to the minor.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the minor and the licensed county adoption agency, or the State Department

of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment which shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the minor and his or her parents since the time of placement.

(3) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the minor concerning placement and the adoption or guardianship, unless the minor's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the minor will be adopted if parental rights are terminated.

(j) This section shall apply to minors made dependents of the court pursuant to subdivision (c) of Section 360 on or after January 1, 1989.

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

SEC. 22. Section 366.22 of the Welfare and Institutions Code, as amended by Section 8 of Chapter 1084 of the Statutes of 1996, is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the court, at the 18-month hearing, shall order the return of the minor to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he

or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(C) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the minor is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that return would be detrimental.

If the minor is not returned to a parent or guardian at the 18-month hearing, the court shall develop a permanent plan. The court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the minor. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it that the minor is not a proper subject for adoption and has no one willing to accept legal guardianship, the court may order that the minor remain in long-term foster care. The hearing shall be held no later than 120 days from the date of the 18-month hearing. The court shall also order termination of reunification services to the parent. The court shall continue to permit the parent to visit the minor unless it finds that visitation would be detrimental to the minor. The court shall determine whether reasonable services have been offered or provided to the parent or guardian.

(b) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment regarding the likelihood that the minor will be adopted if parental rights are terminated. The assessment shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the minor and his or her parents or other members of his or her extended family since the time of placement. Although the extended family of each minor shall be reviewed on a case-by-case basis, "extended family" for the purposes of this paragraph shall include, but not be limited to, the minor's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status and an analysis of whether

any of the minor's characteristics would make it difficult to find a person willing to adopt the minor.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the minor concerning placement and the adoption or guardianship, unless the minor's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

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

SEC. 23. Section 366.22 of the Welfare and Institutions Code, as amended by Section 9 of Chapter 1084 of the Statutes of 1996, is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the court, at the 18-month hearing, shall order the return of the minor to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(C) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the minor is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that return would be detrimental.

If the minor is not returned to a parent or guardian at the 18-month hearing, the court shall develop a permanent plan. The court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the minor. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it that the minor is not a proper subject for adoption and has no one willing to accept legal guardianship, the court may order that the minor remain in long-term foster care. The hearing shall be held no later than 120 days from the date of the 18-month hearing. The court shall also order termination of reunification services to the parent. The court shall continue to permit the parent to visit the minor unless it finds that visitation would be detrimental to the minor. The court shall determine whether reasonable services have been offered or provided to the parent or guardian.

(b) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment which shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the minor and his or her parents or other members of his or her extended family since the time of placement. Although the extended family of each minor shall be reviewed on a case-by-case basis, "extended family" for the purposes of this paragraph shall include, but not be limited to, the minor's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship,

and a statement from the minor concerning placement and the adoption or guardianship, unless the minor's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the minor will be adopted if parental rights are terminated.

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

SEC. 24. Section 366.23 of the Welfare and Institutions Code is amended to read:

366.23. (a) Whenever a juvenile court schedules a hearing pursuant to Section 366.26 regarding a minor, it shall direct that the fathers, presumed and alleged, and mother of the minor, the minor, if 10 years of age or older, and any counsel of record, shall be notified of the time and place of the proceedings and advised that they may appear. The notice shall also advise them of the right to counsel, the nature of the proceedings, and of the requirement that at the proceedings the court shall select and implement a plan of adoption, legal guardianship, or long-term foster care for the minor. In all cases where a parent has relinquished his or her child for the purpose of adoption, no notice need be given to that parent. Service of the notice shall be completed at least 45 days before the date of the hearing, except in those cases where notice by publication is ordered in which case the service of the notice shall be completed at least 30 days before the date of the hearing. If the petitioner is recommending termination of parental rights, notice of this recommendation shall be either included in the notice of a hearing scheduled pursuant to Section 366.26 and served within the time period specified in this subdivision or provided by separate notice to all persons entitled to receive notice by first-class mail at least 15 days before the scheduled hearing.

(b) Notice to the parent of the hearing may be given in any of the following manners:

(1) Personal service to the parent named in the notice.

(2) Delivery to a competent person who is at least 18 years of age at the parent's usual place of residence or business, and thereafter mailed to the parent named in the notice by first-class mail at the place where the notice was delivered.

(3) If the place of residence is outside the state, service may be made in the manner prescribed in paragraph (1) or (2), or by certified mail, return receipt requested.

(4) If the recommendation of the petitioner is limited to legal guardianship or long-term foster care, service may be made by first-class mail to the parent's usual place of residence or business.

(5) If the father or mother of the minor or any person alleged to be or claiming to be the father or mother cannot, with reasonable diligence, be served as provided for in paragraph (1), (2), (3), or (4) or if his or her place of residence is not known, the probation officer shall file an affidavit with the court at least 75 days before the date

of the hearing, stating the name of the father or mother or alleged father or mother and his or her place of residence, if known, setting forth the efforts that have been made to locate and serve the parent.

(A) If the court determines that there has been due diligence in attempting to locate and serve the parent, and the petitioner limits the recommendation to legal guardianship or long-term foster care, the court shall order that notice be given to the grandparents of the minor, if there are any and if their residences and relationships to the minor are known, by first-class mail of the time and place of the proceedings and that they may appear. In any case where the residence of the parent or alleged parent becomes known, notice shall immediately be served upon the parent or alleged parent as set forth in paragraph (1), (2), (3), or (4).

(B) If the court determines that there has been due diligence in attempting to locate and serve the parent and the petitioner does not limit the recommendation to legal guardianship or long-term foster care, the court shall order that service to the parent be by certified mail, return receipt requested, to the parent's counsel of record, if any. If the parent does not have counsel of record, the court shall order that the service be made by publication of a citation requiring the father or mother, or alleged father or mother, to appear at the time and place stated in the citation, and that the citation be published in a newspaper designated as most likely to give notice to the father or mother. Publication shall be made once a week for four successive weeks. In case of service to the parent by certified mail on the counsel of record or publication where the residence of a parent or alleged parent becomes known, notice shall immediately be served upon the parent or alleged parent as set forth in paragraph (1), (2), or (3). When service to the parent by certified mail on the counsel of record or publication is ordered, service of a copy of the notice in the manner provided for in paragraph (1), (2), or (3) is equivalent to service by certified mail on the counsel of record or publication. In any case where service to the parent by certified mail on the counsel of record or publication is ordered, the court shall also order that notice be given to the grandparents of the minor, if there are any and if their residences and relationships to the minor are known, by first-class mail of the time and place of the proceedings and that they may appear.

If the identity of one or both of the parents or alleged parents of the minor is unknown or if the name of either or both of his or her parents or alleged parents is uncertain, then that fact shall be set forth in the affidavit and the court, if ordering publication, shall order the published citation to be directed to either the father or the mother, or both, of the minor, and to all persons claiming to be the father or mother of the minor naming and otherwise describing the minor. Personal service of a copy of the notice or any other form of actual notice to counsel of record is the equivalent of service to counsel of record by certified mail, return receipt requested.

(6) Notwithstanding paragraphs (1) to (5), inclusive, if the parent is present at the hearing at which the court schedules a hearing pursuant to Section 366.26 regarding the minor, the court shall advise the parent of the time and place of the proceedings, their right to counsel, the nature of the proceedings, and of the requirement that at the proceedings the court select and implement a plan of adoption, legal guardianship, or long-term foster care for the minor. The court shall order the parent to appear for the proceedings and then direct that the parent be noticed thereafter by first-class mail to the parent's usual place of residence or business only.

(7) Notwithstanding paragraphs (1) to (5), inclusive, whenever the whereabouts of a parent is not known at the time the court schedules a hearing pursuant to Section 366.26 regarding a minor, and the petitioner presents to the court an affidavit setting forth the name of the parent and the efforts that have been made to locate the parent, the court shall order that the notice for the parent be as set forth in subparagraph (A) or (B) of paragraph (5).

(c) Notice to the minor, if 10 years of age or older of the hearing shall be by first-class mail.

(d) Service is deemed complete at the time the notice is personally delivered to the party named in the notice, or 10 days after the notice has been placed in the mail, or at the expiration of the time prescribed by the order for publication, whichever occurs first. Notwithstanding subdivision (a), if the counsel of record is present at the time that the court schedules a hearing pursuant to Section 366.26 no further notice to the counsel of record shall be required, except to notice counsel of a recommendation to terminate parental rights as set forth in subdivision (a) or as required by subparagraph (B) of paragraph (5) of subdivision (b).

(e) Notwithstanding subdivisions (a) and (b) of this section and Section 7666 of the Family Code, the juvenile court shall order that no notice of the hearing under Section 366.26 be provided to all of the following:

(1) A mother or presumed father who has relinquished the child to the State Department of Social Services or to a licensed adoption agency for adoption, and the relinquishment has been accepted and filed with notice as required under Section 8700 of the Family Code.

(2) An alleged father who has denied paternity and has executed Section 1 of Judicial Council form Paternity-Waiver of Rights (JV-505) waiving notice of further hearings.

(3) An alleged father who has relinquished the child to the department or to a licensed adoption agency for adoption, and the relinquishment has been accepted and filed with notice as required under Section 8700 of the Family Code.

SEC. 25. Section 366.26 of the Welfare and Institutions Code 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. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section. 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, 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 or the minor's counsel 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 proceedings under this section, 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. 26. Section 366.26 of the Welfare and Institutions Code 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. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section. 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, 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 or the minor's counsel 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 proceedings under this section, the court shall consider the wishes of the minor and shall act in the best interests of the minor.

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

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

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

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

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

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

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

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

until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the minor, who shall serve until the minor is adopted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 27. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360, 366.25, or 366.26, the court shall retain jurisdiction over the minor until the minor is adopted or the legal guardianship is established. The status of the minor shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the minor has been granted, the court shall terminate its jurisdiction over the minor. The court may continue jurisdiction over the minor as a dependent minor of the juvenile court following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the minor as a ward of the guardianship established pursuant to Section 360, 366.25, or 366.26 and as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the minor.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the minor.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship which has been granted pursuant to Section 360, 366.25, or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the minor. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the minor, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the probation officer shall make any investigation he or she deems necessary to determine

whether the minor may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the minor in another permanent placement. At the hearing, the parents may be considered as custodians but the minor shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the minor. The court may, if it is in the interests of the minor, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department or probation department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the minor and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued guardianship is the most appropriate plan for the minor. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the minor is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the minor shall be reviewed every six months. This review may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the minor's parents or guardians.

(2) Upon the request of the minor.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the minor remain in long-term foster care pursuant to paragraph (2) of subdivision (g) of Section 366.21, subdivision (a) of Section 366.26, or subdivision (f).

(4) It has been 12 months since a review was conducted by the court.

(e) At the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the minor and shall determine all of the following:

(1) The appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of compliance with the child welfare services case plan.

(4) The adequacy of services provided to the child. The review shall also include a determination of the services needed to assist a child who is 16 years of age or older make the transition from foster care to independent living.

Each licensed foster family agency shall submit reports for each minor in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the minor's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the minor.

Unless their parental rights have been permanently terminated, the parent or parents of the minor are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the interests of the minor, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the minor. In those cases, the court may order that further reunification services be provided to the parent or parents for a period not to exceed six months.

(f) At the review held pursuant to paragraph (3) of subdivision (d), in addition to the review held pursuant to subdivision (e), the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in foster care. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence that the child is not a proper subject for adoption or that there is no one willing to accept legal guardianship. Only upon that determination may the court order that the minor child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(g) If, as authorized by subdivision (f), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the department when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the minor.

SEC. 28. Section 387 of the Welfare and Institutions Code is amended to read:

387. An order changing or modifying a previous order by removing a minor from the physical custody of a parent, guardian, relative, or friend and directing placement in a foster home, or

commitment to a private or county institution, shall be made only after noticed hearing upon a supplemental petition.

(a) The supplemental petition shall be filed by the probation officer in the original matter and shall contain a concise statement of facts sufficient to support the conclusion that the previous disposition has not been effective in the rehabilitation or protection of the minor or, in the case of a placement with a relative, sufficient to show that the placement is not appropriate in view of the criteria in Section 361.3.

(b) Upon the filing of the supplemental petition, the clerk of the juvenile court shall immediately set the same for hearing within 30 days, and the probation officer shall cause notice thereof to be served upon the persons and in the manner prescribed by Sections 335 and 337.

(c) An order for the detention of the minor pending adjudication of the petition may be made only after a hearing is conducted pursuant to Article 7 (commencing with Section 305).

SEC. 29. Section 11400 of the Welfare and Institutions Code is amended to read:

11400. For the purposes of this article, the following definitions shall apply:

(a) "Aid to Families with Dependent Children-Foster Care (AFDC-FC)" means the aid provided on behalf of needy children in foster care under the terms of this division.

(b) "Case plan" means a written document which at a minimum specifies the type of home in which the child shall be placed, the appropriateness of the home for meeting the child's needs, the agency's plan for ensuring that the child, family, and foster parents receive services, and the appropriateness of the services provided to the child, in order to meet the child's needs while in foster care, and to reunify the child with his or her family, or, when reunification is not possible, to facilitate an alternate permanent plan.

(c) "Certified family home" means a family residence certified by a licensed foster family agency and issued a certificate of approval by that agency as meeting licensing standards, and used only by that foster family agency for placements.

(d) "Family home" means the family residency of a licensee in which 24-hour care and supervision are provided for children.

(e) "Small family home" means any residential facility, in the licensee's family residence, which provides 24-hour care for six or fewer foster children who have mental disorders or developmental or physical disabilities and who require special care and supervision as a result of their disabilities.

(f) "Foster care" means the 24-hour out-of-home care provided to children whose own families are unable or unwilling to care for them, and who are in need of temporary or long-term substitute parenting.

(g) "Foster family agency" means any individual or organization engaged in the recruiting, certifying, and training of, and providing

professional support to, foster parents, or in finding homes or other places for placement of children for temporary or permanent care who require that level of care as an alternative to a group home. Private foster family agencies shall be organized and operated on a nonprofit basis.

(h) "Group home" means a nondetention privately operated residential home, organized and operated on a nonprofit basis only, of any capacity, that provides services in a group setting to children in need of care and supervision, as required by paragraph (1) of subdivision (a) of Section 1502 of the Health and Safety Code.

(i) "Periodic review" means review of a child's status by the juvenile court or by an administrative review panel, which shall include a determination of the continuing need for placement in foster care, evaluation of the goals for the placement and the progress toward meeting these goals, and development of a target date for the child's return home or establishment of alternative permanent placement.

(j) "Permanency planning hearing" means a hearing conducted by the juvenile court in which the child's future status, including whether the child shall be returned home or another permanent plan shall be developed, is determined.

(k) "Placement and care" refers to the responsibility for the welfare of a child vested in an agency or organization by virtue of the agency or organization having (1) been delegated care, custody, and control of a child by the juvenile court, (2) taken responsibility, pursuant to a relinquishment or termination of parental rights on a child, (3) taken the responsibility of supervising a child detained by the juvenile court pursuant to Section 319 or 636, or (4) signed a voluntary placement agreement for the child's placement; or to the responsibility designated to an individual by virtue of his or her being appointed the child's legal guardian.

(*l*) "Preplacement preventive services" means services which are designed to help children remain with their families by preventing or eliminating the need for removal.

(m) "Relative" means a person who can be a "caretaker relative" of a dependent child under Section 406 of the Social Security Act. "Relative" also includes any such person who is related to the child's half sibling.

(n) "Voluntary placement" means an out-of-home placement of a minor by (1) the county welfare department after the parents or guardians have requested the assistance of the county welfare department and have signed a voluntary placement agreement; or (2) the county welfare department licensed public or private adoption agency, or the department acting as an adoption agency, after the parents have requested the assistance of either the county welfare department, the licensed public or private adoption agency, or the department acting as an adoption agency for the purpose of

adoption planning, and have signed a voluntary placement agreement.

(o) "Voluntary placement agreement" means a written agreement between either the county welfare department, a licensed public or private adoption agency, or the department acting as an adoption agency, and the parents or guardians of a minor which specifies, at a minimum, the following:

(1) The legal status of the child.

(2) The rights and obligations of the parents or guardians, the child, and the agency in which the child is placed.

(p) "Original placement date" means the most recent date on which the court detained a child and ordered an agency to be responsible for supervising the child or the date on which an agency assumed responsibility for a child due to termination of parental rights, relinquishment, or voluntary placement.

(q) "Transitional housing placement facility" means a community care facility licensed by the State Department of Social Services pursuant to Section 1559.110 of the Health and Safety Code to provide transitional housing opportunities to persons at least 17 years old, and not more than 18 years old unless they satisfy the requirements of Section 11403, who are in out-of-home placement under the supervision of the county department of social services or the county probation department, and who are participating in an independent living program.

SEC. 30. Section 16206 of the Welfare and Institutions Code is amended to read:

16206. (a) The purpose of the program is to develop and implement statewide coordinated training programs designed specifically to meet the needs of county child protective service social workers assigned emergency response, family maintenance, family reunification, permanent placement, and adoption responsibilities. It is the intent of the Legislature that the program include training for other agencies under contract with county welfare departments to provide child welfare services. In addition, the program shall provide training programs for persons defined as mandated child abuse reporters pursuant to Sections 11165 and following of the Penal Code. The program shall provide the following services to the extent possible within the total allocation. If allocations are insufficient, the department, in consultation with the grantee or grantees and the Child Welfare Training Advisory Board, shall prioritize the efforts of the program, giving primary attention to the most urgently needed services. However, county child protective service social workers assigned emergency response responsibilities shall receive first priority for training pursuant to this act.

(b) The program shall provide practice-relevant training for mandated child abuse reporters and all members of the child welfare delivery system which will address critical issues affecting the well-being of children, and shall develop curriculum materials and

training resources for use in meeting staff development needs of mandated child abuse reporters and child welfare personnel in public and private agency settings.

This training shall include all of the following:

(1) Crisis intervention.

(2) Investigative techniques.

(3) Rules of evidence.

(4) Indicators of abuse and neglect.

(5) Assessment criteria, including the application of guidelines for assessment of relatives for placement according to the criteria described in Section 361.3.

(6) Intervention strategies.

(7) Legal requirements of child protection, including requirements of child abuse reporting laws.

(8) Case management.

(9) Using community resources.

(10) Information regarding the dynamics and effects of domestic violence upon families and children.

The training may also include any or all of the following:

(1) Child development and parenting.

(2) Intake, interviewing, and initial assessment.

(3) Casework and treatment.

(4) Medical aspects of child abuse and neglect.

(c) Prior to January 1, 1989, the department shall provide the Legislative Analyst and the Select Committee on Children and Youth with a listing of the counties participating in the program, including the number of persons trained in each county.

(d) The training program shall assess the program's performance at least annually and forward it to the State Department of Social Services for an evaluation and report to the Legislative Analyst. The first report shall be forwarded to the Legislative Analyst no later than January 1, 1990, and on the first of January in any subsequent years. The assessment shall include at minimum the following:

(1) The number of persons trained.

(2) The type of training provided.

(3) The degree to which the training is perceived by participants as useful in practice.

(e) The training program shall provide practice-relevant training to county child protective service social workers who screen referrals for child abuse or neglect and for all workers assigned to provide emergency response, family maintenance, family reunification, and permanent placement services. The training shall be developed in consultation with the Child Welfare Training Advisory Board and domestic violence victims' advocates and other public and private agencies that provide programs for victims of domestic violence or programs of intervention for perpetrators.

SEC. 31. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(b) The Legislature further finds and declares that a case plan ensures that the child receives protection and proper case management, and that services are provided to the parents or other caretakers as appropriate. A case plan shall be based upon the principles of this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made.

(c) When out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of the least restrictive or most familylike and most appropriate setting and selection of the environment best suited to meet the child's special needs and best interests, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(d) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.25 or 366.26, but no less frequently than once every six months.

(e) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(f) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances which required child welfare services intervention.

(2) The case plan shall identify specific goals, and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents which led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance

with regulations adopted by the State Department of Social Services. If the child has been placed in foster care out-of-state, the county social worker or a social worker on the staff of the social service agency in the state in which the child has been placed shall visit the child in the home or institution at least every 12 months and submit a report to the court on each visit.

(5) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(6) When out-of-home placement is made, the case plan shall include documentation of the provisions specified in subdivisions (b), (c), and (d) of Section 16002.

(7) When out-of-home placement is made in a foster family home, group home or other child care institution that is either a substantial distance from the home of the child's parent or out-of-state, the case plan shall specify the reasons why that placement is in the best interests of the child.

(8) When out-of-home services are used, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(9) When out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail.

(10) (A) Parents and legal guardians shall have an opportunity to review the case plan, sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(B) Parents and legal guardians shall be advised that, pursuant to Section 1228.1 of the Evidence Code, neither their signature on the child welfare services case plan nor their acceptance of any services prescribed in the child welfare services case plan shall constitute an admission of guilt or be used as evidence against the parent or legal guardian in a court of law. However, they shall also be advised that 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 may be used in any hearing held pursuant to Section 366.21 or 366.22 as evidence.

(11) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan.

(g) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings be provided with information necessary to accomplish this visitation. Nothing in this section shall be construed to require or prohibit the probation officer's facilitation, transportation, or supervision of visits between the child and his or her siblings.

(h) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

(i) The department, in consultation with the County Welfare Directors Association and other advocates, shall develop standards and guidelines for a model relative placement search and assessment process based on the criteria established in Section 361.3. These guidelines shall be incorporated in the training described in Section 16206. These model standards and guidelines shall be developed by January 1, 1999.

SEC. 32. In enacting this legislation, it is the intent of the Legislature that these provisions result in cost efficiencies. Any cost savings resulting from the implementation of these provisions shall only be used to supplement, not supplant, other children's services programs, including children's health and mental health initiatives and child welfare.

SEC. 33. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

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